

# INDIAN POLITICAL PRACTICE

C. L. TUPPER

B. R. PUBLISHING CORPORATION

DELHI - 110052

# 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 III.

---



B. R. PUBLISHING CORPORATION

461, Vivekanand Nagar, DELHI-110052

**B. R. PUBLISHING CORPORATION**  
461, Vivekanand Nagar, DELHI-110052

First Published in 1895 by Office of the Superintendent  
Government Printing, Calcutta.

Reprinted 1974

Rs. 120-00  
\$ 30-00

Printed by Kohli Offset Works, Shahzada Bagh, Delhi-110035

# CONTENTS.

## CHAPTER XIV.

### BRITISH JURISDICTION IN STATE TERRITORY.

PAGE

- § 439. Introductory—§ 440. British enactments may be applied, but cannot be extended, to State territory—§ 441. Powers of the Governor-General in Council to legislate for subjects and servants of the British Government in State territory—§ 442. British enactments may extend as personal laws to subjects and servants of the British Government in State territory. The Bangalore stamps case, 1862-63—§ 443. Proposed Mysore Postal Regulation, 1893—§ 444. The liability of British subjects and public servants for offences committed in State territory—§ 445. Indian Acts which extend as personal laws to British subjects and public servants—§ 446. British criminal jurisdiction over European British subjects in Native States—§ 447. The Mysore Code of Criminal Procedure, 1884-85—§ 448. The Hyderabad Jail Outbreak, 1885—§ 449. The case of Philip Wilson, Hyderabad, 1886—§ 450. Jurisdiction over European British subjects in Travancore and Cochin—§ 451. European officials in Travancore and Cochin empowered in 1875 to try European British subjects in certain cases—§ 452. Rulings in the Liddell case, 1873, relating to the present subject—§ 453. Summary—§ 454. British territorial jurisdiction in State territory—§ 455. Distinctions drawn by the Bombay Government between substituted, delegated and residuary jurisdiction—§ 456. State jurisdiction exercised by British officers—§ 457. The position of a Superintendent defined in the Charkhari case, 1881—§ 458. The Khairagarh case, 1870—§ 459. States under management in the Central Provinces, 1890-92—§ 460. Summary—§ 461. Cantonment Jurisdiction. The leading case of 1875—§ 462. Rajama's case, Secunderabad, 1872—§ 463. Various Cantonments, 1873—§ 464. The Dewa case, 1874—§ 465. Authorities in International Law quoted from Macpherson's Lists—§ 466. British laws made for or applied to Cantonments in State territory—§ 467. Powers of British Courts and officers in these Cantonments regulated by the British Government—§ 468. The Kherwara case, 1878-79—§ 469. The Secunderabad Jurisdiction case, 1883-84—§ 470. The Cantonments of the Hyderabad Contingent, 1884 to 1894—§ 471. Chinnabi's case, Secunderabad, 1887-89—§ 472. The Baroda Cantonment case, 1886 or 1890—§ 473. The Erinpura Cantonment case, 1892—§ 474. The Bhuj Cantonment case, 1890-91—§ 475. Residency jurisdiction—§ 476. Application of British laws to the Hyderabad Residency Bazars, 1891—§ 477. Civil jurisdiction within Indore Residency limits, 1885—§ 478. The Kolhapur Residency and Civil Station, 1886-87—§ 479. The case of Ghulam Dastagir, Hyderabad Residency Bazars, 1892—§ 480. Lord Lansdowne's minute of February 9, 1892—§ 481. Summary . . . . . 1

## CHAPTER XV.

### RESIDUARY, CEDED, AND DELEGATED JURISDICTION.

- § 482. Introductory—§ 483. Residuary jurisdiction defined—§ 484. Residuary jurisdiction in the Bombay Presidency—§ 485. Non-jurisdictionary Chiefs, Bombay—§ 486. Classification of Chiefs, Bombay—§ 487. Powers of Chiefs of the first and second classes, Bombay—§ 488. System of appeal proposed by the Bombay Government, 1890—§ 489. The proposal negatived by the Government of India, 1891—§ 490. Orders of 1891 regarding the powers of first and second class Chiefs, Bombay—§ 491. Bombay Chiefs and Chiefships may be raised to higher rank in the classification—§ 492. Constitution of the Chief Criminal Court, Kathiawar—§ 493. Residuary jurisdiction in the Feudatory States of the Central Provinces—§ 494. Provisions of the Prisoners' Act, 1871—§ 495. Sentences of imprisonment confirmed by officers exercising residuary jurisdiction may be executed in British jails—§ 496. Provisions of the Prisoners Act as amended in 1894—§ 497. Sentences of imprisonment when referred to a political authority should not be enhanced to sentences of death—§ 498. Residuary jurisdiction in the Tributary Mahals of Orissa and Chhota Nagpur—§ 499. Summary—§ 500. Residuary jurisdiction in the case of the guaranteed Thakurs of Central India—§ 501. Note of 1889 by Mr. Henvey—§ 502. The Agra Barkheda case, 1890—§ 503. The powers of mediated Chiefs defined in 1862—§ 504. The powers of the Chief of Rewa and the Bundelkhand Chiefs, 1864—§ 505. The powers of certain Bundelkhand Chiefs extended in 1867—§ 506. Further *sanads* empowering certain Bundelkhand Chiefs granted in 1887. The powers of other *sanad* Chiefs defined—§ 507. Orders of 1888 regarding interjurisdictional cases in Western Malwa—§ 507 A. Principles laid down in 1890 to guide the discretion of the Political Agent—§ 508. Powers of Central India officers in the exercise of residuary jurisdiction defined in 1883 and 1891—§ 509. Summary—§ 510. The Rajasthanik Court, Kathiawar—§ 511. Constitution of the Court—§ 512. Jurisdiction of the Court—§ 513. Working and continuance of the Court—§ 514. Distinction drawn between ceded and delegated jurisdiction—§ 515. The case of Sala-uddin, Bhopal, 1888—§ 516. British jurisdiction in Kashmir. The Rules of 1873—§ 517. Revised Rules of 1891—§ 518. Summary—§ 519. Ceded jurisdiction—§ 520. Ceded jurisdiction within Railway lands—§ 520 A. Form of notification for applying British Indian enactments to State territory under British jurisdiction—§ 521. Jurisdiction in Berar—§ 522. Other instances of ceded jurisdiction—Bamandrug, 1847—Rajputana Salt Sources, 1869, 1870, 1879—The Civil and Military Station of Bangalore, 1881—The Station of Abu, 1845 to 1894—Kasumti, 1885—The Umaria Coal-fields, 1885—The Periyar Project Camps, 1892—§ 523. Civil Stations in State territory, Bombay—§ 524. Delegated jurisdiction. The case of Vrijeshji Vrijnathji, Maharaj of Nuwanagar, 1882—§ 525. The case of Prabhas Patan, Junagarh, 1892-94—§ 526. Other delegations of authority to special Courts for special trials. The Kunj Behari Lal case, Alwar, 1892—§ 527. The Murder of General Azim-ud-din Khan, Rampur, 1891-92—§ 528. Summary—§ 529. The Thagi and Dacoity Department—§ 530. The functions of the Department—§ 531. Orders of 1877 and 1883—§ 532. Jurisdiction in Thagi and Dacoity trials in Baroda, 1875-1878—§ 533. In Hyderabad, 1881—§ 534. In Rajputana—§ 535. In Central India—§ 536. Powers of pursuit and arrest exercised in State territory by officers of the Thagi Department—§ 537. Provisions of certain repealed enactments—§ 538. Provisions of the present law—§ 539. Reorganisation of the Department sanctioned by the Secretary of State in 1893—§ 540. Summary . . . . . 32

CONTENTS

CHAPTER XVI.

EXTRADITION BETWEEN BRITISH INDIA AND FOREIGN OR NATIVE STATES.

	PAGE
§ 541. Introductory—§ 542. General exposition of the subject addressed to the Straits Settlements, 1884—§ 543. Extradition arrangements with Foreign States—Afghanistan—§ 544. Nepal—The attack upon Hanumannagar, 1887—§ 545. Nepalese officials charged with bribery, 1887—§ 546. The case of Muhammad Ali, watchman, 1891—§ 547. Extradition to the French Settlements—The case of Pir Bakhs, 1884—§ 548. The case of Pole, a deserter from the Austrian man-of-war "Aurora"—§ 549. The case of Seth Srichand, a Jaipur subject, 1886—Amendment of the Rajputana and Hyderabad Extradition Treaties, 1888—§ 550. The case of Najaf Ali, 1884—§ 551. No extradition of European British subjects to Native States—§ 552. The case of Trumpeter Phillips, Mhow and Hyderabad, 1893—§ 553. Extradition of Natives of India to Native States. The Baroda extradition correspondence, 1876-77—§ 554. The extradition of Native British subjects for trial by State Courts is permissible in certain circumstances—§ 555. The extradition of Native servants of the British Government—§ 556. The case of the Mahi Kantha Policeman, 1889—§ 557. The case of Balwant Rao Bute and Ram Sahai, Central India, 1891—§ 558. The murder of General Azim-ud-din Khan, Rampur, 1891—§ 559. Punjab extradition. The orders of 1884—§ 560. The Kashmir Extradition case, 1884 to 1892—§ 561. The regular extradition procedure does not prevent the immediate pursuit and arrest of offenders in State territory—§ 562. Acceptance of bail in extradition proceedings—§ 563. Abetment of an offence is not a scheduled extradition offence under the Act of 1879—§ 563 A. A surrendered person may ordinarily be tried for any offence which he may have committed in the State to which he is surrendered—§ 564. Extradition of prisoners—Chandria's case, Hyderabad, 1893—§ 565. General instructions of 1875 as to the working of the Extradition Act and Rules—§ 566. The effect of Extradition Treaties considered in connection with the Act—§ 567. Extradition must not be so granted as to risk a second conviction of the same person for the same offence—§ 568. Summary . . . . .	66

CHAPTER XVII.

EXTRADITION BETWEEN STATE TERRITORIES UNDER DIFFERENT JURISDICTIONS AND BETWEEN SUBORDINATE STATES.

§ 569. Extradition from State territory under British jurisdiction. Secunderabad case, 1884—§ 570. Interstatal extradition is not regulated by British laws—§ 571. The Rajputana Courts of Vakils—§ 572. Origin of the Courts of Vakils, 1841-44—§ 573. The jurisdiction of the Courts of Vakils is a substitute for extradition—§ 574. Extradition on the Rajputana and Bombay border—§ 575. The Rajputana and Guzerat Border Court . . . § 576. Rules for extradition between various States—Jaipur and Patiala Rules, 1873—§ 577. Extradition between States need not be limited to heinous offences—§ 578. Extradition Rules, Bhartpur and Alwar, 1882—§ 579. Banswara and Partabgarh Rules, 1883—§ 580. Bikanir and Jaisalmir Rules, 1891—§ 581. The case of Natha Dola, Baroda and Barwani, 1882-83—§ 582. Interstatal extradition in Central India—§ 583. Interstatal extradition in the Bombay Presidency—Baroda claim for a <i>prima facie</i> case 1889-91—§ 584. The Baroda claim admitted, 1890—§ 585. Extradition warrants under the Act do not run in State territory—§ 586. The authority of Political Agents in extradition matters is derived from the Paramount Power—§ 587. Provisions of various rules and treaties regarding the <i>prima facie</i> case—§ 588. The case of the Rao of Kutch, 1891—§ 589. Summary . . . . .	90
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

CHAPTER XVIII.

SERVICE OF PROCESSES AND EXECUTION OF DECREES AND SENTENCES.

§ 590. Introductory—§ 591. Execution of decrees of British Courts by State Courts or officers in State territory—§ 592. Correspondence and orders of 1867 and 1868. Ruling of 1895 that States whose decrees may be executed in British India may be asked to reciprocate—§ 593. Summary—§ 594. Rules of 1863 left unaltered in 1880 and 1886—§ 595. Provisions of the Code of Civil Procedure regarding the execution of certain decrees—§ 596. Provisions of the Code of Civil Procedure as to the service of summonses in certain cases—§ 597. Summonses and decrees of State Courts, and of British Courts in State territory, Bombay, 1880 to 1885. Notification of March 1880—§ 598. Correspondence regarding Summonses, 1882—§ 599. Correspondence regarding execution of decrees, Bombay, 1883-84—§ 600. Service of Summonses again referred to—§ 601. Decrees and Summonses of Mysore Courts, 1882. Execution of British processes in Mysore territory—§ 602. Decrees of Travancore and Cochin Courts, 1885—§ 603. Reasons why legislation was not undertaken in 1870—§ 604. Views of Lord Napier of Merchiston—§ 605. Decrees and State demands—Secunderabad, Hyderabad Residency Bazaars, and Nizam's City and Suburban Courts, 1884—§ 606. Reciprocity in fees on Civil processes, Gwalior, Mysore and Hyderabad—§ 607. General measures adopted in 1889 to promote permissible reciprocity—§ 608. Notifications of March 1889—Execution of decrees—§ 609. Lists of British Courts in State territory—§ 610. Privileges of Nizam's City and Suburban Courts and of Mysore State Courts—§ 611. Service of summonses by British Courts in State territory—§ 612. The Bombay Courts included in the system of reciprocity, 1890—§ 613. Inclusion of the Courts of the Resident in Kashmir and his Assistants, 1891—§ 614. Summary—§ 615. Criminal processes—Case of Tota Ram and Panna Lal, Indore, 1885-86—§ 616. Kuch Behar case, 1886—§ 616 A. Criminal processes of British Courts can be executed in Mysore territory—§ 617. Attendance of witnesses—Bombay Presidency, 1888—§ 618. Purcell's case, 1892—§ 619. Proposed reciprocity in service and execution of certain criminal processes by all British Courts whether in State or British territory—§ 620. Commissions for the examination of witnesses—§ 621. Summary—§ 622. Death sentences passed in the exercise of residuary jurisdiction may, in certain circumstances, be executed in British India . . . . .	104
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

CHAPTER XIX.

THE POSITION OF RULING CHIEFS AND THEIR SUBJECTS IN BRITISH TERRITORY.

§ 623. Introductory—§ 624. Present law as to the position of Ruling Chiefs in Civil matters in British territory—§ 625. Holkar's case, 1867—§ 626. Can a British Court distinguish between the	
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

public and private property of a Ruling Chief?—§ 627. The Raja of Nahan's case, 1874—§ 628. Amendment of the Civil Procedure Code, 1877—§ 629. Summary—§ 630. Opinion that permission to sue a Chief on the ground that he trades in British territory should not be granted unless the suit is connected with his trading—§ 631. Practice of the Government of India in dealing with applications for leave to sue Ruling Chiefs—§ 632. Appointment of recognised agents of Chiefs. The Courts must decide who are Ruling Chiefs for the purposes of section 433 of the Code of Civil Procedure—§ 633. Summary—§ 634. The acquisition of immoveable property by Ruling Chiefs in British territory should be discouraged—§ 635. The grounds of the policy noted above—§ 636. Government lands must not be granted or sold to Ruling Chiefs—§ 637. The Kashmir case, 1871 and 1882—§ 638. Repeated objections to the acquisition of lands in British territory by Maharaja Holkar and his family—§ 639. Proposed loan on mortgage by the Muli State disallowed, 1894—§ 640. Bhopal cases, 1886-87—§ 641. Exceptions made from the general rule for special reasons. Holkar permitted to purchase a building site at Khandwa, 1884—§ 642. The Raja of Mailhar permitted to retain certain properties, 1890—§ 643. No interference in a case of bequest, Kothi, 1892—§ 644. Kapurthala allowed to make a small addition to an existing holding near Lahore, 1893—§ 645. Pudukotta allowed to buy two residences at a hill station, 1893—§ 646. Permission given, 1894, to a Deccan Sardar to buy building land at Poona—§ 647. Acquisitions by the Amir of Afghanistan in the Peshawar District—§ 648. The Bhartpur case, 1893—§ 649. Hundelkhand and other cases in which Chiefs and others have not been pressed to dispose of their properties—§ 650. Transactions in British territory must be governed by British law—§ 651. Summary—§ 652. Liability of certain transactions to British laws further illustrated—§ 653. Liability of transactions connected with the Kapurthala Oudh Estates to the operation of the Stamp Law—§ 654. Liability of the Sultan of Zanzibar's trading vessels to the operation of the Native Passenger Ships Act—§ 655. Liability of the Amir's almond trade to Khaibar tolls and Peshawar City duties—§ 656. Grant of honorary Commissions in the Army to Ruling Chiefs and others—§ 657. The employment of the relatives of Ruling Chiefs in the military service of the British Government—§ 658. The employment of Ruling Chiefs in civil affairs under the British Government—§ 659. Position of the subjects of Native States (1) residing outside India, (2) in relation to Foreign Powers, (3) on the high seas in Native State vessels—§ 660. Civil employment under the British Government is open to the subjects of Native States—Hyderabad Attachés, 1872—§ 661. Rajputana and Central India Attachés, 1876—§ 662. Bombay reference regarding naturalisation, 1892—§ 663. The civil employment of the subjects of Native States by the British Government is not barred by the Act of Settlement—§ 664. The case of Chimanram Rambhagat, Bombay trader, 1892-93—§ 665. The case of Shah Ram Lal of Jodhpur, 1892-93. The subjects of Native States are eligible for appointment to the Provincial Service—§ 666. Summary—§ 667. Counsel may not appear in political cases, but petitioners may engage aid in preparing memorials—§ 668. Case of the Maharani of Rewa, 1882—§ 669. Cases of Dr. Kavanagh and Mr. Dawson, 1883—§ 670. Case of the Thákur of Tharad, 1884—§ 671. Summary—§ 672. In political cases the reference of disputed questions of law or fact to High Courts is inexpedient and without legal sanction—§ 673. General amenability of subjects of Native States to British Courts in respect of things done in British India . . . . . 123

## CHAPTER XX.

## THE POSITION OF BRITISH OFFICIALS, EUROPEANS AND THE LIKE, IN STATE TERRITORY.

§ 674. Introductory—§ 675. General instructions to Political Officers—§ 676. Lord Ellenborough's Circular of 1842—§ 677. Mr. Thomason's letter of 1843 to Sir Henry Lawrence—§ 678. Sir John Malcolm's instructions to his subordinates, 1821—§ 679. The old general instructions approved by the Government of India in 1874—§ 680. Orders of 1838 as to circumstances under which a Resident should give advice to a Ruling Chief—§ 681. Summary—§ 682. Instructions relating to particular matters of conduct—Political Officers must not guarantee loans to Native States. The Kota case, 1875—§ 683. Circular of 1832 prohibiting interference in certain pecuniary dealings—§ 684. Orders of 1838 to a similar effect—§ 685. It is usually undesirable that Political Officers should guarantee engagements between Ruling Chiefs and their subjects—§ 686. Political Officers must not act as arbitrators in disputes between British subjects and Ruling Chiefs—The case of Dr. Williams, 1878—§ 687. The case of Mr. Larmie, 1884—§ 688. The Nilgiri case, 1890—§ 689. Political Officers must not execute commissions for Ruling Chiefs—§ 690. Rules regarding the use of Darbar vehicles and animals—§ 691. Political Officers may not borrow money from, or lend it to, Natives within their circles—§ 692. Rules relating to the acceptance of presents—§ 693. Rules as to the remuneration of Medical Officers for attendance on Ruling Chiefs and others in Native States—§ 694. Political Officers must not hold land in Native States—§ 694 A. As a general rule Political Officers should not use Darbar houses or furniture—§ 695. Except with previous sanction officers of Government may not ask Ruling Chiefs or officials of Native States for subscriptions—Officers of Government must not collect subscriptions for political objects—Political officers must not influence Rulers or Ministers of Native States to subscribe to public or private funds—§ 696. Rules regarding the communication of orders of Government to Darbars—§ 696 A. Political Officers are under the rules of discipline generally applicable to public servants of like rank—§ 697. The duty of impartiality—§ 698. Summary—§ 699. Escorts of Political Officers in Native States—§ 700. Summary—§ 701. The operation of the Income Tax Act in State territory—§ 702. The position of Europeans and foreigners in Native States—§ 703. Holding of immoveable property by Europeans and foreigners in State territory—Cases of Messrs. Russell and Neve, Kashmir, 1884-86—§ 704. The Murree Brewery, 1886—§ 705. Mr. Ward's case, 1892—§ 706. Residence of Europeans in Native States; Mr. Currie's case, Bhopal, 1886—§ 707. Summary—§ 708. The limited jurisdiction of Native States over Native Officers and soldiers of the British army in respect of offences committed in State territory—§ 709. Limited jurisdiction of the Kathiawar States over the Kathiawar Agency Police—§ 710. Alien servants of the British Government are to be made liable for offences under the Indian Penal Code committed in State territory . . . . . 155

## CHAPTER XXI.

## TREATIES AND AGREEMENTS.

711. Introductory—§ 712. Instructions of 1884 relating to the execution of treaties and agreements—§ 713. Instructions of 1884 compared with the instructions of 1868—Instructions of 1868 repeated in 1878—Instructions of 1884 communicated to the Punjab Government in 1887 and 1892—§ 714. Orders relating to the sealing of treaties—§ 715. Treaties and agreements must

CONTENTS

CHAPTER XVI.

EXTRADITION BETWEEN BRITISH INDIA AND FOREIGN OR NATIVE STATES.

	PAGE
§ 541. Introductory—§ 542. General exposition of the subject addressed to the Straits Settlements, 1884—§ 543. Extradition arrangements with Foreign States—Afghanistan—§ 544. Nepal—The attack upon Hanumannagar, 1887—§ 545. Nepalese officials charged with bribery, 1887—§ 546. The case of Muhammad Ali, watchman, 1891—§ 547. Extradition to the French Settlements—The case of Pir Bakhsh, 1884—§ 548. The case of Pole, a deserter from the Austrian man-of-war "Aurora"—§ 549. The case of Seth Srichand, a Jaipur subject, 1886—Amendment of the Rajputana and Hyderabad Extradition Treaties, 1888—§ 550. The case of Najaf Ali, 1884—§ 551. No extradition of European British subjects to Native States—§ 552. The case of Trumpeter Phillips, Mhow and Hyderabad, 1893—§ 553. Extradition of Natives of India to Native States. The Baroda extradition correspondence, 1876-77—§ 554. The extradition of Native British subjects for trial by State Courts is permissible in certain circumstances—§ 555. The extradition of Native servants of the British Government—§ 556. The case of the Mahi Kantha Policeman, 1889—§ 557. The case of Balwant Rao Bute and Ram Sahai, Central India, 1891—§ 558. The murder of General Azim-ud-din Khan, Rampur, 1891—§ 559. Punjab extradition. The orders of 1884—§ 560. The Kashmir Extradition case, 1884 to 1892—§ 561. The regular extradition procedure does not prevent the immediate pursuit and arrest of offenders in State territory—§ 562. Acceptance of bail in extradition proceedings—§ 563. Abetment of an offence is not a scheduled extradition offence under the Act of 1879—§ 563 A. A surrendered person may ordinarily be tried for any offence which he may have committed in the State to which he is surrendered—§ 564. Extradition of prisoners—Chandria's case, Hyderabad, 1893—§ 565. General instructions of 1876 as to the working of the Extradition Act and Rules—§ 566. The effect of Extradition Treaties considered in connection with the Act—§ 567. Extradition must not be so granted as to risk a second conviction of the same person for the same offence—§ 568. Summary . . . . .	66

CHAPTER XVII.

EXTRADITION BETWEEN STATE TERRITORIES UNDER DIFFERENT JURISDICTIONS AND BETWEEN SUBORDINATE STATES.

§ 569. Extradition from State territory under British jurisdiction. Secunderabad case, 1884—§ 570. Interstate extradition is not regulated by British laws—§ 571. The Rajputana Courts of Vakils—§ 572. Origin of the Courts of Vakils, 1841-44—§ 573. The jurisdiction of the Courts of Vakils is a substitute for extradition—§ 574. Extradition on the Rajputana and Bombay border—§ 575. The Rajputana and Guzerat Border Court—§ 576. Rules for extradition between various States—Jaipur and Patiala Rules, 1873—§ 577. Extradition between States need not be limited to heinous offences—§ 578. Extradition Rules, Bhartpur and Alwar, 1882—§ 579. Banawara and Partabgarh Rules, 1883—§ 580. Bikanir and Jaisalmir Rules, 1891—§ 581. The case of Natha Dola, Baroda and Barwani, 1882-83—§ 582. Interstate extradition in Central India—§ 583. Interstate extradition in the Bombay Presidency—Baroda claim for a <i>prima facie</i> case 1889-91—§ 584. The Baroda claim admitted, 1890—§ 585. Extradition warrants under the Act do not run in State territory—§ 586. The authority of Political Agents in extradition matters is derived from the Paramount Power—§ 587. Provisions of various rules and treaties regarding the <i>prima facie</i> case—§ 588. The case of the Rao of Kutch, 1891—§ 589. Summary . . . . .	90
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

CHAPTER XVIII.

SERVICE OF PROCESSES AND EXECUTION OF DECREES AND SENTENCES.

§ 590. Introductory—§ 591. Execution of decrees of British Courts by State Courts or officers in State territory—§ 592. Correspondence and orders of 1867 and 1868. Ruling of 1895 that States whose decrees may be executed in British India may be asked to reciprocate—§ 593. Summary—§ 594. Rules of 1863 left unaltered in 1880 and 1886—§ 595. Provisions of the Code of Civil Procedure regarding the execution of certain decrees—§ 596. Provisions of the Code of Civil Procedure as to the service of summonses in certain cases—§ 597. Summonses and decrees of State Courts, and of British Courts in State territory, Bombay, 1880 to 1885. Notification of March 1880—§ 598. Correspondence regarding Summonses, 1882—§ 599. Correspondence regarding execution of decrees, Bombay, 1883-84—§ 600. Service of Summonses again referred to—§ 601. Decrees and Summonses of Mysore Courts, 1882. Execution of British processes in Mysore territory—§ 602. Decrees of Travancore and Cochin Courts, 1885—§ 603. Reasons why legislation was not undertaken in 1870—§ 604. Views of Lord Napier of Merchiston—§ 605. Decrees and State demands—Secunderabad, Hyderabad Residency Bazars, and Nizam's City and Suburban Courts, 1884—§ 606. Reciprocity in fees on Civil processes, Gwalior, Mysore and Hyderabad—§ 607. General measures adopted in 1889 to promote permissible reciprocity—§ 608. Notifications of March 1889—Execution of decrees—§ 609. Lists of British Courts in State territory—§ 610. Privileges of Nizam's City and Suburban Courts and of Mysore State Courts—§ 611. Service of summonses by British Courts in State territory—§ 612. The Bombay Courts included in the system of reciprocity, 1890—§ 613. Inclusion of the Courts of the Resident in Kashmir and his Assistants, 1891—§ 614. Summary—§ 615. Criminal processes—Case of Tota Ram and Panna Lal, Indore, 1885-86—§ 616. Kuch Behar case, 1886—§ 616 A. Criminal processes of British Courts can be executed in Mysore territory—§ 617. Attendance of witnesses—Bombay Presidency, 1888—§ 618. Purcell's case, 1892—§ 619. Proposed reciprocity in service and execution of certain criminal processes by all British Courts whether in State or British territory—§ 620. Commissions for the examination of witnesses—§ 621. Summary—§ 622. Death sentence passed in the exercise of residuary jurisdiction may, in certain circumstances, be executed in British India . . . . .	104
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

CHAPTER XIX.

THE POSITION OF RULING CHIEFS AND THEIR SUBJECTS IN BRITISH TERRITORY.

623. Introductory—§ 624. Present law as to the position of Ruling Chiefs in Civil matters in British territory—§ 625. Holkar's case, 1867—§ 626. Can a British Court distinguish between the	
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

public and private property of a Ruling Chief—§ 627. The Raja of Nahan's case, 1874—§ 628. Amendment of the Civil Procedure Code, 1877—§ 629. Summary—§ 630. Opinion that permission to sue a Chief on the ground that he trades in British territory should not be granted unless the suit is connected with his trading—§ 631. Practice of the Government of India in dealing with applications for leave to sue Ruling Chiefs—§ 632. Appointment of recognised agents of Chiefs. The Courts must decide who are Ruling Chiefs for the purposes of section 433 of the Code of Civil Procedure—§ 633. Summary—§ 634. The acquisition of immoveable property by Ruling Chiefs in British territory should be discouraged—§ 635. The grounds of the policy noted above—§ 636. Government lands must not be granted or sold to Ruling Chiefs—§ 637. The Kashmir case, 1871 and 1882—§ 638. Repeated objections to the acquisition of lands in British territory by Maharaja Holkar and his family—§ 639. Proposed loan on mortgage by the Muli State disallowed, 1894—§ 640. Bhopal cases, 1886-87—§ 641. Exceptions made from the general rule for special reasons. Holkar permitted to purchase a building site at Khandwa, 1884—§ 642. The Raja of Mailhar permitted to retain certain properties, 1890—§ 643. No interference in a case of bequest, Kothi, 1892—§ 644. Kapurthala allowed to make a small addition to an existing holding near Lahore, 1893—§ 645. Pudukota allowed to buy two residences at a hill station, 1893—§ 646. Permission given, 1894, to a Deccan Sardar to buy building land at Poona—§ 647. Acquisitions by the Amir of Afghanistan in the Peshawar District—§ 648. The Bhartpur case, 1893—§ 649. Hundelkhand and other cases in which Chiefs and others have not been pressed to dispose of their properties—§ 650. Transactions in British territory must be governed by British law—§ 651. Summary—§ 652. Liability of certain transactions to British laws further illustrated—§ 653. Liability of transactions connected with the Kapurthala Oudh Estates to the operation of the Stamp Law—§ 654. Liability of the Sultan of Zanzibar's trading vessels to the operation of the Native Passenger Ships Act—§ 655. Liability of the Amir's almond trade to Khaibar tolls and Peshawar City duties—§ 656. Grant of honorary Commissions in the Army to Ruling Chiefs and others—§ 657. The employment of the relatives of Ruling Chiefs in the military service of the British Government—§ 658. The employment of Ruling Chiefs in civil affairs under the British Government—§ 659. Position of the subjects of Native States (1) residing outside India, (2) in relation to Foreign Powers, (3) on the high seas in Native State vessels—§ 660. Civil employment under the British Government is open to the subjects of Native States—Hyderabad Attachéships, 1872—§ 661. Rajputana and Central India Attachéships, 1876—§ 662. Bombay reference regarding naturalisation, 1892—§ 663. The civil employment of the subjects of Native States by the British Government is not barred by the Act of Settlement—§ 664. The case of Chimanram Rambhagat, Bombay trader, 1892-93—§ 665. The case of Shah Ram Lal of Jodhpur, 1892-93. The subjects of Native States are eligible for appointment to the Provincial Service—§ 666. Summary—§ 667. Counsel may not appear in political cases, but petitioners may engage aid in preparing memorials—§ 668. Case of the Maharani of Rewa, 1882—§ 669. Cases of Dr. Kavanagh and Mr. Dawson, 1883—§ 670. Case of the Thákur of Tharad, 1884—§ 671. Summary—§ 672. In political cases the reference of disputed questions of law or fact to High Courts is inexpedient and without legal sanction—§ 673. General amenability of subjects of Native States to British Courts in respect of things done in British India . . . . . 123

## CHAPTER XX.

## THE POSITION OF BRITISH OFFICIALS, EUROPEANS AND THE LIKE, IN STATE TERRITORY.

§ 674. Introductory—§ 675. General instructions to Political Officers—§ 676. Lord Ellenborough's Circular of 1842—§ 677. Mr. Thomason's letter of 1843 to Sir Henry Lawrence—§ 678. Sir John Malcolm's instructions to his subordinates, 1821—§ 679. The old general instructions approved by the Government of India in 1874—§ 680. Orders of 1838 as to circumstances under which a Resident should give advice to a Ruling Chief—§ 681. Summary—§ 682. Instructions relating to particular matters of conduct—Political Officers must not guarantee loans to Native States. The Kota case, 1875—§ 683. Circular of 1832 prohibiting interference in certain pecuniary dealings—§ 684. Orders of 1838 to a similar effect—§ 685. It is usually undesirable that Political Officers should guarantee engagements between Ruling Chiefs and their subjects—§ 686. Political Officers must not act as arbitrators in disputes between British subjects and Ruling Chiefs—The case of Dr. Williams, 1878—§ 687. The case of Mr. Larminie, 1884—§ 688. The Nilgiri case, 1890—§ 689. Political Officers must not execute commissions for Ruling Chiefs—§ 690. Rules regarding the use of Darbar vehicles and animals—§ 691. Political Officers may not borrow money from, or lend it to, Natives within their circles—§ 692. Rules relating to the acceptance of presents—§ 693. Rules as to the remuneration of Medical Officers for attendance on Ruling Chiefs and others in Native States—§ 694. Political Officers must not hold land in Native States—§ 694 A. As a general rule Political Officers should not use Darbar houses or furniture—§ 695. Except with previous sanction officers of Government may not ask Ruling Chiefs or officials of Native States for subscriptions—Officers of Government must not collect subscriptions for political objects—Political officers must not influence Rulers or Ministers of Native States to subscribe to public or private funds—§ 696. Rules regarding the communication of orders of Government to Darbars—§ 696 A. Political Officers are under the rules of discipline generally applicable to public servants of like rank—§ 697. The duty of impartiality—§ 698. Summary—§ 699. Escorts of Political Officers in Native States—§ 700. Summary—§ 701. The operation of the Income Tax Act in State territory—§ 702. The position of Europeans and foreigners in Native States—§ 703. Holding of immoveable property by Europeans and foreigners in State territory—Cases of Messrs. Russell and Neve, Kashmir, 1884-86—§ 704. The Murree Brewery, 1886—§ 705. Mr. Ward's case, 1892—§ 706. Residence of Europeans in Native States; Mr. Currie's case, Bhopal, 1886—§ 707. Summary—§ 708. The limited jurisdiction of Native States over Native Officers and soldiers of the British army in respect of offences committed in State territory—§ 709. Limited jurisdiction of the Kathiawar States over the Kathiawar Agency Police—§ 710. Alien servants of the British Government are to be made liable for offences under the Indian Penal Code committed in State territory . . . . . 155

## CHAPTER XXI.

## TREATIES AND AGREEMENTS.

711. Introductory—§ 712. Instructions of 1884 relating to the execution of treaties and agreements—§ 713. Instructions of 1884 compared with the instructions of 1868—Instructions of 1868 repeated in 1878—Instructions of 1884 communicated to the Punjab Government in 1887 and 1892—§ 714. Orders relating to the sealing of treaties—§ 715. Treaties and agreements must



be executed in English, and the English version is the accepted text. The Bundi case, 1868—§ 716. The Gwalior exchange case, 1871—§ 717. The Hathmati river case, Idar, 1874—§ 718. Only permanent transactions should be recorded in treaties—§ 719. Treaties and agreements may be executed in triplicate—§ 720. Treaties and agreements with Ruling Chiefs are acts of State—§ 721. The Banganapalle succession case, 1870—§ 722. Treaty making powers of the Governor-General in Council—§ 723. Treaty-making powers of Local Governments—§ 724. The Shaikh Othman case, Aden, 1882—§ 725. Kutch and Nawanager, 1883—§ 726. Additional Postal Agreement, Gwalior, 1888—§ 727. A minor Chief may make an agreement with the British Government—§ 728. Summary—§ 729. No engagements except treaties are ratified by the Viceroy—Railway agreement with Holkar, 1870—§ 730. The Patiala, Jind and Nabha Postal Conventions, 1885—§ 731. The Gwalior Postal Convention, 1885—An agreement approved and confirmed by the Government of India, is complete and binding without a *kharita* from the Viceroy—§ 732. In the case of conventions or similar engagements not ratified by the Viceroy, the usual formalities should be observed—The Kutch and Nawanager case, 1884—§ 733. In many understandings with Native States it is expedient to avoid conventions and similar formal agreements—The Rajkot Tank case, 1890—§ 734. The Surgana case, 1893—§ 735. The Akalkot case, 1894—§ 736. Summary—§ 737. Present preference for *sanads* and *kharitas* in recording engagements with Native States—The Periyar jurisdiction case, 1891—§ 738. Reasons for the form of the Mysore instrument of transfer, 1881—§ 739. The Sawantwari *sanad*, 1884—§ 740. *Sanads* are used to confer or confirm territorial possessions and to grant powers, honours, and rewards—§ 741. *Kharitas* are now often used for treaty purposes—The Marwar-Merwara case, 1885—§ 742. The Mewar-Merwara case, 1883—§ 743. The Jhansi and Morar exchange, 1886—§ 744. Summary—§ 745. The interpretation of Treaties and other written engagements with Native States—§ 746. Minute of Sir Henry Maine in the Rampur Cession case, 1868—§ 747. No special form of agreement is necessary for the cession of jurisdiction—§ 748. The terms of an agreement may be varied by consent without the formal alteration of documents—§ 749. Summary—§ 750. The participation of India in Commercial Treaties between the British Government and Foreign Powers—§ 751. Exclusion of India from the Commercial Treaty with Italy, 1884—§ 752. India desires in 1884 to be excluded from the proposed treaty with Paraguay—§ 753. The Secretary of State in 1885 withdraws his assent to the participation of India in the proposed Treaty with Mexico—§ 754. India desires to withdraw from the Salvador Treaty, 1835—§ 755. The Goa Treaty of 1878 is not a precedent for separating the States from British India in relations with Foreign Powers—§ 756. Extradition agreements with Dharampur and Jauhar—§ 757. Summary . . . . . 178

## CHAPTER XXII.

### TITLES AND CEREMONIAL.

§ 758. Introductory—§ 759. The grant of titles in India—The Resolution of Lord William Bentinck, 1829—§ 760. Lord Canning's despatch of 1859—§ 761. No one but the Viceroy can grant Native titles to Chiefs or Native British subjects in India—Case of the Raja of Pudukota, 1870—§ 762. Case of Mr. Edulji Pestonji, Bombay, 1870—§ 763. Powers of Ruling Chiefs in regard to titles—Case of Muhammad Faiz Ali Khan of Jaipur, 1870—§ 764. Case of Mardan Ali Khan, Jodhpur, 1872-73—§ 765. Captain Clerks's case, Hyderabad, 1875—§ 766. Hyderabad cases—Abdul Hakk, 1882—Abdul Hakk, 1884—Mehdi Ali Khan, 1887-88—Cases of Mushtak Husain and Saiyid Husain Balgrami, 1891—§ 767. Ruling Chiefs should not propose for British subjects in their service titles the same as those usually conferred by the Viceroy—§ 768. The Viceroy may grant titles to subjects of Native States—The Patiala Khalifas, 1883—§ 769—Procedure in delivering grants of titles to inhabitants of Native States. Kashmir case, 1887, Baroda case, 1893—§ 770. Summary—§ 771. Ruling Chiefs may not institute Orders of Distinction. The proposed revival of the Order of the Ali Band, Hyderabad, 1885—§ 772. Proposed institution of the Order of Gandabherunda, Mysore, disallowed, 1891—§ 773. Hereditary titles granted by the British Government—§ 774. Many hereditary titles not expressly conferred or recognised by the British Government are in common use—§ 775. Express recognition of hereditary titles held by usage—Case of the Chanchra family, 1884—§ 776. Case of the Naldanga family, 1884—§ 777. Decision in the Chanchra and Naldanga cases—§ 778. Decision in the Susang case—§ 779. Case of the Madras Zamindars and Carnatic titles, 1889—§ 780. The full style and titles should be used in addressing Ruling and Titular Chiefs—§ 781. What titles are granted as hereditary distinctions—Case of Seths Gokul Das and Balabh Das, Jabalpur, 1893—§ 782. Case of Raja Amir Hasan, Oudh, 1884—§ 783. Case of Sir Jotindra Mohan Tagor, 1890-94—§ 784. Measures for legalising settlements of property made to support hereditary titles proposed but abandoned—§ 785. Titles conferred by the British Government are personal unless stated to be hereditary—§ 786. Summary—§ 787. The title of Prince—§ 788. The title of Prince occasionally allowed merely as a courtesy title—§ 789. The title of Shahzada—The Kabul Saddozais—§ 790. The family of Tipu Sultan of Mysore—§ 791. Courtesy titles of sons of Titular Chiefs—§ 792. The titles of His Highness and His Excellency—§ 793. Native titles are now distributed periodically—§ 794. Titles should not be proposed for persons of inferior social position—§ 795. Establishment of titles for the reward of literary merit—§ 796. Proposals for badges or symbols of honour rejected in Bombay, but accepted in Burma—*Khilats* may be given with titles but not medals—§ 797. Titles may be withdrawn for misconduct—Case of Maulavi Izhar Husain, 1875—§ 798. Case of the Raja of Puri, 1878—§ 798 A. Case of Abdul Ali, 1881-81—§ 799. Case of Anup Singh, 1883—§ 800. Case of Sadik Husain of Bhopal, 1885—§ 801. Case of Raja Ram Singh of Bansri, 1886—§ 802. Case of Raja Mokham Singh of Partapner, 1893—§ 802 A. Case of K. Kunjan Menon, 1888—§ 803. Summary—§ 804. *Ex-officio* titles in British India—§ 805. *Ex-officio* titles in vernacular correspondence in the Punjab and elsewhere—§ 806. *Ex-officio* titles for members of local boards, 1882 and 1891—§ 807. *Ex-officio* titles in the Public Works Department, 1886 and 1891—§ 808. *Ex-officio* titles in Native States—§ 809. Summary—§ 810. Analysis of the table of salutes. Permanent or dynastic, personal and local salutes distinguished—§ 811. As a general rule salutes are granted only to Ruling Chiefs—§ 812. Powers of the Viceroy in respect to salutes in India—§ 813. Principles observed in framing the Table of Salutes—§ 814. The question of precedence is not affected by the number of guns—§ 815. Powers of Ruling Chiefs in respect to salutes—§ 816. The Royal salute in India—§ 817. Grant of salutes in certain cases of regency—Case of Sir Ganpat Rao of Gwalior, 1888—§ 818. Use of alterations in salutes as rewards or punishments—§ 819. Summary—§ 820. The Viceroy determines precedence in Darbars—The Jodhpur case, 1870—§ 821. Arrests should not be made in Darbar—The proposed arrest of the Senapati, Manipur, 1891 . . . . .

## CHAPTER XIV.

### BRITISH JURISDICTION IN STATE TERRITORY.

§ 439. State territory has been described in paragraphs § 234, § 235, and § 240. It will be remembered that, to repeat the language of the Foreign Jurisdiction and Extradition Act, 1879, "by treaty, capitulation, grant, usage, sufferance, and other lawful means, the Governor-General in Council has power and jurisdiction within divers places beyond the limits of British India." Power and jurisdiction do or may extend wherever legislation may extend: and the power and jurisdiction of the Governor-General in Council do or may extend wherever the laws passed by the Governor-General in Council have acquired or may be given territorial application. There are numerous British enactments which of their own force extend in State territory to subjects or servants of the British Government as a part of their personal law. No British enactment can of its own force extend as a territorial law to any part of State territory. But British enactments may, as we have already said, be applied as territorial laws, with or without modification, to State territory in which the Governor-General in Council has power or jurisdiction; and the application of British enactments, as territorial laws, to portions of State territory is effected, not by legislation, but by executive order of the Governor-General in Council.

§ 440. The distinction between the application and the extension of an Act is drawn in several places in the Minutes of Sir Henry Maine. "I find it difficult," he said<sup>1</sup> on March 5, 1864, "to persuade myself that the extension of the Code of Criminal Procedure to Mysore brings that State for all purposes within the system of British Indian criminal law. What seems to me to have happened is that Mysore and British India . . . have accidentally the same criminal jurisprudence. I would suggest that the 'extension' of Acts to Mysore is a misleading expression, for extension has a peculiar meaning under our system. 'Application' strikes me as a better word." Elsewhere, speaking of the Cotton Frauds Act, he observed—<sup>2</sup> "Berar, being governed in the name of the Nizam, is under the legislative authority of the Governor-General in Executive Council. The proper expression, however, for introducing the Act is not 'extend,' which has a technical meaning in India. The Government should direct that the Act be *applied* to the Berars." "Let me remark," he said again<sup>3</sup> on December 29, 1868, "that legislative enactments are not *extended* but *applied* to the Assigned Districts, which are not part of British India."

§ 441. Power to legislate for subjects and servants of the British Government in State territory has been conferred on the Governor-General in Council by a series of enactments. In a Minute<sup>4</sup> of February 16, 1868, Sir Henry Maine wrote—"By successive Acts of Parliament all 'servants of Government' in India, but not in British India, have from a remote period been made subject to the enactments of the Governor-General in Council. This legislative power has been subsequently extended so as to embrace all European British subjects in Native States, and I hope it will soon cover all native subjects also." Since August 11, 1869, it does cover Native Indian subjects of Her Majesty anywhere. By section 22 of the Indian Councils Act<sup>5</sup> of 1861 the Governor-General

<sup>1</sup> Minute No. 21, pages 85 and 86.

<sup>2</sup> Minute No. 89, page 72.

<sup>3</sup> Minute No. 91, page 223.

<sup>4</sup> Minute No. 68, page 160.

<sup>5</sup> 24 and 25, Vict. Chap. 67.

ral in Council was empowered to make laws "for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty." This power was extended in 1865 by a Statute of that year<sup>6</sup> which declared that "the Governor-General in Council shall have power, at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise." The expression "British subjects" was understood to mean European British subjects, and a Statute passed<sup>7</sup> on August 11, 1869, about a year and a half later than Sir Henry Maine's Minute above quoted, gave the Governor-General in Council power to make laws "for all persons being Native Indian subjects of Her Majesty, her heirs and successors, without and beyond as well as within the Indian territories under the dominion of Her Majesty."

"In addition," says Mr. Macpherson,<sup>8</sup> "to these general powers, the Governor-General in Council is invested with special power (a) under the Statute 3 and 4 Will. IV, chap. 85, section 73 (saved by 24 and 25 Vict., chap. 67, section 22), to make Articles of War for Her Majesty's Indian army wheresoever serving; and (b) under the Statute 47 and 48 Vict., chap. 38, to make laws for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service whose vessels are within the limits of 'Indian waters,' as defined in the Statute."

§ 442. A few cases may be quoted which illustrate the extension of British

British enactments may extend as personal laws to subjects and servants of the British Government in State territory.

enactments as personal laws to subjects and servants of the British Government in State territory. In 1862 a question arose whether the Stamp Act should be enforced in the Cantonment of Bangalore. In accordance with the advice of the Advocate General the Government of India informed the Government of Madras that the Act was not in force throughout the Cantonment generally if, as was stated, the Cantonment was not British territory; but they considered that certain provisions of the Act applied to Military Courts of Requests held within the Cantonment, "Such Courts," they said, "whether within the British territories or not,

The Bangalore Stamps case, 1862-63.

are held under the provisions of the Indian Mutiny Act and must be considered in all respects as British Courts of Justice. And, on principle, parties who resort to these Courts and thus obtain the benefit of British law, ought to pay the stamps which, by that law as existing in India, are imposed on judicial proceedings." The next year the Madras Government inquired whether certificates of Baptism, Burials and Marriages granted within the Cantonment of Bangalore to other than non commissioned officers and private soldiers were liable to stamp-duty. This question, with the previous papers relating to the levy of stamps in Military Courts of Requests, came before Sir Henry Maine, who noted—"It is within the legislative power of any State to extend its fiscal laws to its subjects though they are resident in foreign territory, provided only any means can be found for levying the impost. At the same time no fiscal law is taken to affect subjects resident abroad, unless the intention to bring them within its sweep is clearly disclosed. No such intention appears in the Stamp Act, which must be considered limited primarily to British India. Persons under English military law carry, however, their nationality with them wherever they go for military purposes, and hence I agree with the Advocate General that stamps on documents filed in Military Courts of Requests established in Native territory are lawfully imposed. But I do not think that stamp-duty can be legally demanded for certificates of Baptism, Marriage and so forth issued at Bangalore." The reply of the Government of India to the Madras Government merely stated that "stamp-duty cannot be legally demanded for certificates of Baptism, Marriage, etc., in the Cantonment of Bangalore, because, except as

<sup>6</sup> 28 and 29, Vict., Chap. 17, Section 1.  
<sup>7</sup> 32 and 33, Vict., Chap. 98, Section 1. "This Act empowers the Governor-General in Council to make personal laws for all native Indian subjects of Her Majesty all over the world—see Legislative Department unofficial reference

<sup>8</sup> *Lists of British Enactments in force in Native States, compiled by J. M. Macpherson, Central India, page 6.*

No. 858, July 1874; unofficial reference No. 1567, May 1878. See also *Cases and Opinions on Constitutional Law*, by Forsyth, page 17." Note by the Honourable C. P. Herbert in his Edition of the Indian Constitutional Statutes, page 104.

regards proceedings before Military Courts of Requests, the Stamps Act is not in force in Bangalore, the Cantonment not being British territory." The principles implied in Sir Henry Maine's Minute *that the fiscal laws of the British Government can follow its subjects, and the military laws the persons under them, wherever they may go*, were not affirmed by the Government of India. But the opinion of Sir Henry Maine on these two points will carry a weight which is practically irresistible.<sup>9</sup>

§ 443. The Bangalore stamps case is an old one; but there is a recent case also connected with Mysore territory, which shows very well how British laws can follow British servants and subjects in State territory. Section 59 of the

Proposed Mysore Postal Regulation,  
1893.

Indian Post Office Act, 1866, provides that a public servant employed in a postal service established by the British Government

in State territory shall, if he commits a breach of the Act, be punished as if the offence had been committed in British India; and that he may be tried by any Court or officer duly empowered by the Governor-General in Council to take cognizance of offences committed by public servants in the State where the post runs, or by any Court or Magistrate, or other competent officer in any part of British India. The Imperial postal system was introduced<sup>10</sup> in Mysore in April 1889; in July 1892 the Officiating Resident in Mysore submitted a draft regulation adopting the Indian Post Office Act with some alterations as a territorial law for Mysore. The intention was that the draft should be passed by the Darbar with the assent of the Government of India, but the law was to be a Mysore law, not a British enactment. As there was no territorial law in force in Mysore which corresponded to the Act, subjects of the Maharaja committing offences against the Act in Mysore territory could not be punished for them unless they happened also to be offences under the Indian Penal Code which is in force in that territory. "Native British subjects," said the Officiating Resident, "who offend against the Act within the limits of the territories of Mysore, have to be tried by British Magistrates—a course which is not only inconvenient to parties and witnesses, but is also expensive and occasions delay. In the existing state of things even Post Office employes in the territories of Mysore can be tried under the provisions of section 59 of the Act, only by a British Court, or Magistrate, or by a court or officer duly empowered by the Governor-General in Council to take cognizance of offences committed by a public servant in those territories." But there was no Court or Officer so empowered for Mysore. Many of the provisions of the Indian Post Office Act are, however, considered to be unsuited to the present advanced requirements of the postal administration. As the only pressing need for legislation in Mysore was to make provision for the punishment of offences against the Post Office Law, the Government of India suggested that the Mysore Darbar should pass a simple regulation "to the effect that the provisions, so far as they may be suitable, of the Indian Post Office Act (XIV of 1866) (as amended for the time being by subsequent enactments), and of all rules and orders for the time being issued thereunder shall be in force in the territories of Mysore, and that every person, *other than a European British subject*, committing an offence against the said provisions in the said territories, shall be liable to be tried and punished by any Court or Magistrate having jurisdiction therein." Such a regulation would be a temporary measure and would avoid the undesirable delay which would ensue if the Darbar were to wait till the amendments proposed in the British Indian Law had been finally settled. The insertion of the words "so far as they may be suitable" would exclude the application of provisions which the postal administration had outgrown.<sup>11</sup>

This case is very instructive in several ways. It shows that, for a postal offence committed in Mysore territory, a Native British subject might be punished by a British Court or Magistrate, or by a Court or Officer duly empowered in this behalf. A Native British subject in postal employ thus carries his liabilities under the Indian Post Office Act with him into State territory as a personal law. The case also shows that, by the enactment of a Mysore territorial law covering generally the ground of the Indian Post Office Act, the Mysore Courts could acquire

<sup>9</sup> Pro. Revenue B. May 1862, Nos. 10-12.  
Pro. Finance Department, Separate Revenue (Stamps).  
Nov. 1864, Nos. 430-439.  
Maine's Minutes, No. 26, page 51, where the Minute is

wrongly dated. The correct date is April 28, 1863.

<sup>10</sup> As to the introduction of the Imperial postal system in Mysore, see paragraph § 164.

<sup>11</sup> Pro. Internal A, May 1893, Nos. 1-5.

concurrent jurisdiction in the case of postal offences other than those which are offences also under the Indian Penal Code; that in this latter class of offences, they had certain concurrent jurisdiction already; and that their jurisdiction did not and would not extend to European British subjects, in respect of whom plenary jurisdiction is vested in the Governor-General in Council under clause 17 of the Mysore Instrument of Transfer.<sup>13</sup>

§ 444. That British subjects carry with them into State territory as a personal law their liability under the Indian Criminal Codes can be shown generally

The liability of British subjects for offences committed in State territory. from several enactments. The Indian Penal Code<sup>13</sup> (see sections 3 and 4) applies generally to persons liable by any law passed by the Governor-General in Council to be tried for an offence committed beyond the limits of British India; and to servants of the Queen committing offences within the dominions of Princes or States in alliance with Her Majesty. The law, however, is at present defective as regards servants of Government, for the Code of Criminal Procedure omits to give the Courts jurisdiction unless the Government servants are subjects of the Queen. This point will be explained further in Chapter XX. By section 8 of the Foreign Jurisdiction and Extradition Act, 1879, the law relating to offences and to criminal procedure for the time being in force in British India is extended, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty, and to all Native Indian subjects of Her Majesty in any place beyond the limits of British India. Finally, under section 188 of the Code of Criminal Procedure, when a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found; with the proviso, however, that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India. The section also contains a further proviso that any proceedings taken against any person under it "which would be a bar to subsequent proceedings for the same offence if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India."

§ 445. From Mr. Macpherson's *Lists of British enactments in force in*

Indian Acts which extend as personal laws to British subjects and public servants.

*Native States* many more illustrations may be given of the extension of Acts of the Governor General in Council as personal laws to British subjects and public servants in State territory. The usual form of words declares that the Act in question extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty; but perhaps the form used in the Births, Deaths and Marriages Registration Act, 1886, is more correct. Section 2 of that Act runs—"This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions." The Acts so applying to British subjects or public servants may be classified in several groups. Some are connected with the private relations of life, some with the Military or Marine administration, others with shipping or inland communications, whilst there are a few of a miscellaneous character affecting chiefly criminal proceedings or the liabilities or conduct of officials. For instance, the Indian Divorce Act, 1869, applies to British subjects in State territory, though relief is limited to a petitioner professing the Christian religion and residing in India at the time of presenting the petition. The Indian Christian Marriage Act, 1872, applies to Christian subjects of Her Majesty in Native States. The Married Women's Property Act, 1874, applies to subjects of Her Majesty in those States, exception being made as regards any married woman who at the

<sup>13</sup> *Vide* Appendix B of Volume II. A Regulation Pro., Internal A, April 1894, Nos. 76-77. which substantially, though not exactly, follows the advice of the Government of India, has been sanctioned: *vide* <sup>14</sup> As amended by Acts XXVII of 1870, XIX of 1872, VIII of 1882, X of 1886, and X of 1891.

time of her marriage professed the Hindu, Muhammadan, Sikh or Jaina religion, or whose husband, at that time, professed any of these religions. The Administrator General's Act, 1874, applies generally to British subjects of Her Majesty, and the Indian Majority Act, 1875, to any subjects of Her Majesty in State territory, but nothing in the Act last named affects the capacity of any person to act in matters of Marriage, Dower, Divorce and Adoption, or the religion or religious rites or usages of any class of Her Majesty's subjects in India, or the capacity of any person who, before the Act came into force, had attained majority under the law applicable to him. In the second category—enactments concerned with the Military and Marine administration—we may place the Indian Articles of War, No. V of 1869, the Indian Volunteers Act of the same year, the Lunatic Soldiers Property Act, 1873, Act No. XIV of 1887 relating to the Indian Marine (as amended by Act XVII of 1888) and the Indian Reserve Forces Act, 1888. In the third category fall the Indian Post Office Act, 1866, the Indian Telegraph Act, 1885, the Native Passenger Ships Act, 1887, and the Indian Railways Act, 1890. The Indian Oaths Act, 1873, applies generally to subjects of Her Majesty in State territory. The European Vagrancy Act, 1874, is in a somewhat peculiar predicament inasmuch as many important provisions of it do not apply in Native States except upon express notification by the Governor-General in Council. The Income Tax Act, 1886, as will be noticed in another chapter, applies in State territory to British subjects who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf. The Official Secrets Act, No. XV of 1889, applies to all subjects of Her Majesty in State territory and to all Native Indian subjects of Her Majesty without and beyond British India.

§ 446. Perhaps more than enough has been said to show that there is a most extensive and elaborate British civil and criminal jurisdiction following British subjects, Europeans and others, into the territory of Native States, practically as a part of their personal law, and often connected with their military duties or civil position as public servants. But something remains to be said as to the exercise of criminal jurisdiction in the case of European British subjects.

We have noticed in paragraph §2 the ruling of August 1871 that no Native State Courts can be permitted to try European British subjects. This ruling was, no doubt, modified in the Liddell case and afterwards, as we shall presently fully explain. But it seems advisable first to set out some comparatively recent precedents—cases of the years 1884 to 1886 inclusive—which at any rate suggest, though they do not expressly decide, that, according to the present practice of the Government of India, the ruling of August 1871 was hardly, if at all, too broad.

§ 447. Before the rendition the Code of Criminal Procedure, then Act X of 1872, was in force in Mysore, and after the rendition a Mysore regulation was drafted for the purpose of enacting the later Code, Act X of 1882, with the necessary modifications, as a Mysore law. When the Province was gov-

erned as a British Province by a Chief Commissioner, the sections of the Code relating to proceedings against European British subjects were in force with the rest of the Act. But in considering the draft Regulation the Government of India, consistently with clause 17 of the Instrument of Transfer,<sup>14</sup> which reserves plenary criminal jurisdiction over European British subjects to the Governor General in Council, proposed that nothing in the Mysore adaptation of the Code should apply to persons of that class. The Mysore Darbar proposed<sup>15</sup> to omit most of the sections relating to European British subjects, but to retain sections 445, 453, 454, and 455 which affected them. The Government of India objected to the retention of these sections, but the Mysore authorities still urged the acceptance of their original proposal, and, moreover, contended that a clause providing that nothing in the Code should apply to European British subjects, would cause very great inconvenience.

<sup>14</sup> Appendix B of Vol. II.

<sup>15</sup> Pro. A, Judicial I, April 1884, Nos. 7-10 A.

To the retention of sections 454 and 455 the Darbar did not attach much importance. Section 454 enacts that the omission, in certain circumstances, by a European British subject to plead his status shall amount to a relinquishment of the right to be dealt with as such. Section 455 provides that when a person who is not a European British subject is dealt with as such, and does not object, the proceedings shall not, on that account, be invalid. Section 453 prescribes the procedure when a person claims to be dealt with as a European British subject; but the omission or retention of this section, except as a matter of principle, was of no great consequence because the Courts must obviously form some conclusion upon such a claim, if made, whether a procedure be prescribed from them or not. The important section was Section 445 which enables any Magistrate to take cognizance of an offence committed by a European British subject in any case in which he could take cognizance of a like offence if committed by another person; for although it is obligatory upon the Magistrate to make his process for the appearance of a European British subject returnable before a Magistrate having jurisdiction to inquire into or try the case (that is to say, ordinarily a Magistrate of the 1st class being himself a European British subject and a Justice of the Peace), the process might take the form of a warrant of arrest, and besides the power of ordering arrest, various other considerable powers might be exercised. There was a very full discussion of the whole matter in the Government of India, turning largely upon this section, but mainly upon the question of principle whether, in the absence of proved necessity, any State Courts should be given any power over European British subjects. In the official orders no reasons were stated for the decision, which of itself was sufficiently significant. It will suffice to say here that it was held by Mr. Durand and Sir Charles Grant, the Foreign Secretary, that even if we could depend on the maintenance of a sufficiently high standard in the Courts of Mysore, much embarrassment would certainly result from conferring on Mysore jurisdiction which we could not extend to other Native States. The case was decided by Lord Dufferin; and the orders were thus expressed<sup>16</sup> :—

“With regard to the wish of the Darbar that sections 445, 453, 454, and 455 should be retained, I am to say, that after full and careful consideration of all the arguments which have been advanced in support of such a course, the Government of India see no sufficient reason to modify their original opinion in this matter. These sections should accordingly be omitted from the regulations embodying the Code.

“With regard to the form of the proviso which the Government of India suggested should be added to section I, to the effect that the Code should not apply to European British subjects, I am to say that the clause may be worded in the following terms :—‘Nothing herein contained shall be deemed to confer any jurisdiction in proceedings against European British subjects.’”

The Government of India subsequently ruled<sup>17</sup> that the word “jurisdiction” in the clause just cited, shall be held to mean jurisdiction to inquire into or try a charge, and that Police Officers and Magistrates in Mysore may exercise with respect to European British subjects the same powers as may be exercised with respect to persons of that class by Police Officers and by Magistrates who are not Justices of the Peace, respectively, in places in British India outside the Presidency towns.

§ 448. In February 1885 the Superintendent of the Hyderabad Jail prohibited the ingress of some women who, under the pretence of selling vegetables, had been in the habit of supplying the prisoners with opium, tobacco, and other nominally prohibited articles. The prisoners assumed a defiant attitude, refused their rations and assembled in a crowd. It was considered necessary to send for State troops. A few stones were thrown, but the troops lost their heads, their officers failed to control them, fire was opened, and a number of prisoners were killed and wounded. The facts were investigated by a Commission who considered that only one of the European officers of the regular State troops had some sort of excuse for permitting or ordering the fire. They attributed the largest share of the

<sup>16</sup> Pro., A, Judicial I., August 1884, Nos. 48—49. Pro., Internal A, April 1885, No. 186. If a similar question should arise again the discussions in these proceedings should be read *in extenso*.

<sup>17</sup> Pro., Internal A, February 1883, Nos. 91—97. See also Pro., Internal A, February 1885, Nos. 1—6.

blame for the unfortunate loss of life which occurred to the misconduct of the regular troops under the immediate command of Captain Fuller and Lieutenant Stephenson. The Resident, Mr. Cordery, advised the trial of these two English officers by Court Martial, if the Hyderabad Minister could see his way to compose a tribunal of this description out of the officers of the reformed troops of the State. If the course would involve difficulties, Mr. Cordery thought that the Nizam should be encouraged simply to dispense with the services of the two officers concerned. The Government of India, however, presuming that Captain Fuller and Lieutenant Stephenson were European British subjects, did not think it desirable that they should be tried by a Court Martial composed of officers from other regiments of the Nizam's troops. "The difficulty," they said,<sup>18</sup> "which the Minister is likely to find in forming a properly constituted Court, will perhaps give you a sufficient reason for altering your recommendation on this point: but however this may be, the political inconvenience which might result from the trial of European British subjects before a tribunal of the Hyderabad State, is so great that your recommendation cannot be supported. If necessary, the Nizam's Government can degrade the officers concerned or dispense with their services, but they should not be tried by a Court Martial."

§ 449. On July 10, 1861, a *sanad* was issued by the Nizam declaring the authority of the Resident to inquire into and punish offences committed by Europeans and others in Hyderabad territory. The *sanad* is in Aitchison,<sup>19</sup> but may be transcribed here. It is thus worded:—

"Whereas many Europeans, foreigners and others, descendants of Europeans, and born in India, are resident in the territory of His Highness the Nizam; and as disturbances arise amongst themselves and the inhabitants of the said territory, it is hereby made known by the Nizam's Government that, in the event of any dissension or dispute arising among the classes aforementioned within the said territory, except those employed by the Sarkar and its dependants, the Resident at Hyderabad, or other officer or officers whom he may from time to time consider it desirable to vest with the same, shall be empowered to inquire into and punish any such offences."

In 1885 a man named Wilson, a Negro employed in the Nizam's Stud Department, was tried by the Nizam's Courts on a charge of embezzlement and sentenced to two years' imprisonment. Some correspondence connected with the case passed between the Resident and the Minister of the Nizam, and eventually Wilson petitioned the Government of India. Wilson alleged that he had been born in Canada and was a British subject, but it was doubtful whether this was true and he may have been a native of Africa rescued from slavery. Mr. Cordery, the Resident, who was at first of opinion that the man should, as an American, be subject to the jurisdiction of a British Court, withdrew his claim to exercise jurisdiction upon the representation of the Nizam's Minister that Wilson was an African Sidi. In a letter to the Minister, however, Mr. Cordery expressed the belief that Wilson was in the employ of the Hyderabad Government and "precluded thereby from claiming the benefit of the *sanad* of 10th July 1861." And in reporting the case to the Government of India Colonel Ross, the Officiating Resident, said that even were Wilson "unmistakeably a European British subject, the case would be governed by the *sanad* of 1861, and the Resident would have no right of interference." There was no reason to suppose that Wilson had been improperly convicted.

The Government of India observed that if Wilson were a Sidi and not a British subject, there need be no further action in the matter. But referring to what the Resident had written on the subject of the *sanad*, they said—"These passages are liable to be construed as admissions that the Resident derives his jurisdiction over European British subjects directly from the Nizam's *sanad* and not by delegation from the Governor-General in Council. The *sanad*, indeed, is valuable, so far as it goes, as an expression of the Nizam's acquiescence in jurisdiction possessed by the British Government in the Hyderabad State; but the jurisdiction which the Governor-General in Council possesses is

<sup>18</sup> Pro., Internal A, July 1885, Nos. 55-61.

<sup>19</sup> Aitchison, VIII, p. 368. See also page 278 where the *sanad* is described as *declaratory* of the Resident's authority.



not to be limited or curtailed by a reservation made in that *sanad* in respect of persons in the service of the Darbar, and therefore your view of the scope of the *sanad*, as shown in your letter, cannot be accepted by the Government of India." They then reminded the Resident of the orders passed in June 1885 in the case of the Hyderabad Jail outbreak, when, as already mentioned, the trial by Court Martial of the two European officers was prohibited, and added that it might be necessary that the nationality of Wilson should be more particularly determined, though the relinquishment of jurisdiction on the ground that he was an African Sidi would prevent the case from forming a precedent for the trial of a European or American British subject by a Hyderabad Court.

This decision was dated September 29, 1886. The Resident ascertained that Philip Wilson was an African Sidi, and not a British subject; and Wilson was informed that the Government of India declined to interfere in his behalf.<sup>20</sup> The decision of September 29, 1886, is a very important one because of the strength and clearness with which it asserts the prerogative of the Government of India to exercise jurisdiction over European British subjects in Native States. If the British jurisdiction obtains, as in fact it does obtain, in the first Muhammadan State in India without any delegation from the Native Government, and independently of a *sanad* which would limit the jurisdiction if it had been conferred in that way, then there can be no State in India which can raise a valid objection to the exercise of the prerogative at the discretion of the Paramount Power.<sup>1</sup>

§ 450. In saying this we have not forgotten the final outcome of the celebrated Liddell case abstracted in paragraphs §2, §3 and §4, nor the special concessions made to the Travancore and Cochin States, nor the riders added in consequence of the discussions with these States to the broad and general ruling of August 1871. About the time when the Secretary of State expressed his concurrence in the views enunciated by the Government of India in the Liddell case, a fresh case arose in Travancore in which the Government of India decided to allow the jurisdiction of the Travancore Courts. The facts were thus stated by the Madras Government:—

["A B, believed to be a European British subject, owns certain lands and house property at C, in the Travancore territory, and complains that criminal trespass has been made on her property; that the local authorities have not afforded her redress; that the British Resident has referred her back to them; that a countercharge of obstructing a right of way has been laid against her by the parties against whom she complained, and a summons issued for her appearance before the Travancore authorities, which she refused to obey; and that she understands a warrant has consequently been issued to compel her attendance. A. B. claims to be exempt, as a European British subject, from the jurisdiction of the Travancore Courts, but the Resident has informed her that she is in error in this respect. This Government have no reason whatever to suppose that justice would not be administered by those Courts in the case, and the fact remains that at present in Travancore there is no other Court which can adjudicate in such cases; the Political Agent, though a Justice of the Peace, having no delegated authority to act."]

[The orders of the Government of India were conveyed<sup>2</sup> in the following words:—

["I am to remark that the 'criminality' therein involved is little more than technical; the dispute was obviously one about the title to property, during which each party did something which the other tried to erect into a crime. The character of the act probably depends on the question of title; and if the alleged criminal has mistaken his rights and so committed a crime, it is clearly one which is very trivial. It would not, however, be convenient if the moment a case passes the often narrow boundary which separates civil from criminal questions, the Travancore Court should be paralysed because one of the parties is a British subject or claims to be such." But the letter continued:—"It is the right of British subjects, while obeying the Travancore Courts, to invoke the aid

<sup>20</sup> Proc., Internal A., May 1887, No. 115.

<sup>1</sup> Proc., Internal A., December 1886, Nos. 37-44.

<sup>2</sup> Proc., Judicial A., September 1873, Nos. 16-18.

of the Resident, and the duty of the Resident to give aid if required. This was so before the ruling expressed in my letter of 29th August 1873. It is now also the duty of the Travancore Courts to consult the Resident, which of course they should do directly they find they have to deal with one who claims to be a British subject. But it may be quite essential that they should exert their authority in the meantime. Whether in this respect they do right or wrong, exert their powers reasonably or unreasonably, must be judged of in each case according to its circumstances. ....Probably the present case is settled. If not, it seems *primâ facie* to be one for the handling of the Travancore Courts. But the Resident should learn what passes, and interpose if under colour of administering the civil law, or incidentally thereto, a British subject is made criminally liable in any serious way.”]

This correspondence and the correspondence in the Liddell case with the Secretary of State were circulated confidentially<sup>3</sup> on October 12, 1874. The circular said:—[“With respect to the discretion to be exercised by a Political officer in leaving a British subject to be tried by the Courts of the Native State, or in requiring his transfer to a competent British Court, much must of course depend on the nature of the case and the character of the judicial administration of the State concerned. His Excellency in Council, however, is of opinion that, *provided the laws and courts of a Native State are on a satisfactory footing, a European British subject who has taken service in the State should, as a rule, be left to the jurisdiction of the Native Courts, subject only to the right of interference on the part of the Political Officer if there be special and sufficient reason for the exercise of such interference in the particular case.*”

§ 451. [These letters, however, did not close the correspondence entirely. The Cochin and Travancore Darbars demurred to the decision of Government on the question of jurisdiction, and though the *principles* involved in the decision were at the time adhered to, Government made some concessions with regard to practice in both States. These concessions were made not as a matter of right, but as a recognition of the enlightened judicial administration in Cochin and Travancore.] The fact was that there were European British subjects in both

European officials in Travancore and Cochin empowered in 1875 to try European British subjects in certain cases.

States who were either already acting as Magistrates or were fit to be invested with magisterial powers for the trial of cases in which Europeans were concerned. It was thus practicable to gratify the Darbars by allowing them to appoint the European Magistrates while at the same time European British subjects were not deprived of any protection which they would have received in the matter of criminal jurisdiction if the Magistrates and Justices of the Peace had been directly nominated by the Governor-General in Council. [“So long,” said the Government of India, “as the Governor-General in Council is satisfied that European British subjects in Travancore and Cochin both receive due protection and are subjected to due control under the plan proposed, His Excellency in Council will consent to Magistrates of the courts in Travancore and Cochin who are European British subjects and Christians exercising over European British subjects in those States, subject to such control as the Resident has heretofore exercised, and such advice as he is empowered by treaty to offer, the same jurisdiction as may be exercised over them in our own territories by European British subjects who are Magistrates of the 1st class and Justices of the Peace.”]

The Government of India were also prepared to grant powers of committal on the same conditions and it was to be understood that the arrangements must be revised should the European Magistrates of the Travancore and Cochin Courts at any time fail, in the exercise of their jurisdiction over European British subjects, to give satisfaction to the British Government. After some further correspondence, which need not be abstracted, the arrangements finally agreed upon were, so far as necessary, notified in the *Gazette of India* on August 9, 1875. Five Europeans in Travancore and two in Cochin were appointed Justices of the Peace. Of these two were to exercise appellate powers sitting as State Courts. The Resident for the time being in Cochin and Travancore (being a European British subject) was also appointed a Justice of the Peace within the State.

<sup>3</sup> Circular No. 1887, dated October 12, 1874—Pro., Judicial A., October 1874, Nos. 22—30.

Cases triable by the Magistrates were to be tried by the State officers empowered as Justices of the Peace with an appeal to the State Judges similarly empowered, both original and appellate proceedings being subject to the control of the Resident. Cases for committal might be committed either to the Resident, who was given powers of a Court of Session, or to the High Court at Madras. The Resident might also commit cases for trial to the same tribunal, to which also an appeal lay from his decisions. The Madras High Court was given all necessary jurisdiction including powers of revision in all cases in the two States in which the accused were European British subjects and Christians resident in the States.<sup>4</sup>

§ 452. When making from the Liddell case such extracts as were material to the question of the subordination of Native States to the Paramount Power, we passed by the argument of the Diwan that the British Government had expressly admitted the jurisdiction of the Travancore State over European British subjects. It is necessary to refer to that argument here before we conclude what we have to say upon the jurisdiction of the British Government over these persons in State territory. The contention of the Diwan was correct. [The British Government had in fact on one occasion admitted the jurisdiction of Native States over European British subjects. In 1837 the Resident had been informed by the Government of India, in answer to an enquiry, "that Europeans residing in the territories of Native States, not being servants of the British Government, must be held to be in all respects and in all cases, civil and criminal, subject to the law of the country in which they reside."'] It will be remembered that in the despatches of 1873 the Government of India held jurisdiction over European British subjects to be one of the many undefined matters which, in the absence of express treaty stipulation, the Paramount Power is entitled to regulate, and expressed the opinions that the right of control in this matter should not be carried further than is absolutely necessary, and that the Resolution of August 8, 1871, was defective in making no provision for cases in which it would be right for European British subjects to be tried by State Courts. The argument from the orders of 1837 was met in these terms<sup>5</sup> :—

[“When the jurisdiction of Travancore was recognised in 1837, there were difficulties in the way of trying in British Courts European British subjects, other than servants of Government, for offences committed in Native States. These difficulties have now been removed by recent Acts of the Imperial and Indian Legislatures: and in the opinion of His Excellency in Council, the question is thereby placed on a different footing from that on which it formerly rested. ‘Practically,’ as observed by Sir Madhava Rao in his letter of October 19, 1868, ‘a British subject residing in Travancore has two distinct sets of laws to obey; he should obey British laws, and he should obey Travancore laws.’ For an offence against British laws committed in Native States, a European British subject can now be dealt with in British Courts in all respects as if the offence had been committed in British territory. On the other hand, acts may be committed by a European British subject in Travancore, which are offences against the local law, but which are not offences against British law. Such is the case of breach of the Travancore revenue laws alluded to by Sir Madhava Rao in paragraph 18 of his letter already quoted. In these cases, the British Courts have no jurisdiction. It appears, therefore, to His Excellency in Council that instances might occur in which it would be reasonable and proper that a European British subject should be tried by the local Courts of Travancore. Again it is possible that the act committed may be an offence against both laws, and it would not be desirable that a European British subject should be liable to two tribunals. Conflict would inevitably arise, unless the action to be taken is regulated by one and the same authority; and as the British Courts have jurisdiction, it is most in accordance with the requirements of such a case, and in the interest of the Native State itself, that the offender should be tried in the British Courts, and by a law and procedure to which he is accustomed.”]

<sup>4</sup> Pro., Judicial A, February 1876, Nos. 4—20. We have here considerably shortened the leading case of 1875 without, it is believed, omitting anything material. The Notifications (Nos. 119 and 120J, dated August 9, 1875) are printed at pages 24 and 32 of Macpherson's Lists of *British Enactments in force in Native States, Madras and Mysore* Volume, <sup>5</sup> Pro., Judicial A, September 1873, No. 8.

The Government of India then observed that the altered condition of the law respecting the trial of European British subjects for offences committed in State territory required some alteration in the practice which had hitherto prevailed. ["With respect," they continued, "to the practice, Mr. Ballard in his letter of the 23rd April 1872, No. 46, states that if a charge of a serious nature was brought before the Travancore authorities against a European British subject of an offence committed in Travancore, the British Resident would by usage be consulted by the Local Government in the disposal of the case; and, in applying the existing usage, to show how far the proposed agreement between the States of Travancore and Cochin would take effect as regards the extradition of European British subjects, he says that the advice of the Resident would in all probability be followed. It will be seen from the preceding observations that the trial and punishment of European British subject is, in the opinion of the Government of India, a matter on which the Governments of Travancore and Cochin are in all cases bound to consult the Resident and to follow the opinion deliberately expressed by him.

["With regard to the discretion to be exercised by the Resident, the Government of India are of opinion that when he finds the offence to be one against British law, he should, as a rule, require the transfer of the offender for trial by a competent British Court, and should not leave him to be tried by a Travancore or Cochin Court, except under very special circumstances and with the express permission of the Government of Madras; and that when he finds the offence to be one against Travancore or Cochin and not against British law, he must decide in each case whether justice will best be done by leaving the offender to be tried by the Travancore or Cochin Courts, referring, if necessary, to the Government of Madras for guidance."]

§ 453. In summarising up to this point what has been said in this chapter we shall take into view the Liddell case detailed in Chapter I so far as it is here to the purpose, and, subject to some remarks to be made presently, we shall omit unsettled questions. For instance, we shall omit the decision of 1874 that as a rule European British subjects, who are servants of Native States, should be left to the jurisdiction of the State Courts; for that decision has been so greatly weakened by the subsequent orders of 1885 and 1886 in the cases of the Hyderabad Jail outbreak and Philip Wilson, that it can scarcely be regarded as still in force: and we shall abstain from touching several thorny points of law which lie latent in what we have written. We have already said in paragraph § 14 that jurisdiction over European British subjects charged with crime committed in a Native State is one of the many undefined matters which the British Government, in virtue of its position, has a right to regulate. With this explanation we may state the following conclusions:—

(1) *British enactments may extend as personal laws to the subjects and servants of the British Government in State territory.*

(2) *British enactments may be applied by executive order, but cannot be extended by the Legislature as territorial laws to State territory over which the British Government has jurisdiction.*

(3) *The subjects of the British Government are amenable to the British criminal law for offences committed in State territory.*

(4) *British jurisdiction extends to European British subjects in State territory without any delegation of authority by the State Government, nor is any State Government competent to limit that jurisdiction.*

(5) *Jurisdiction over European British subjects charged with offences committed in State territory is controlled upon certain principles which, though they depend in great measure on the character of the judicial administration of the several States, may be broadly stated as follows:—*

[(i) *A European British subject is not ipso facto exempt from the jurisdiction of the Courts of a Native State in which he may happen to be, but is bound to obey them.*

[(ii) *While obeying the Courts of the State, it is the right of such European British subject to invoke the aid of the British authorities, and it is the*

*duty of the Political Officer immediately connected with the State to give aid if required.*

*[(iii) It is also the duty of the State Courts to consult that officer directly they find they have to deal with one who claims to be a European British subject, and to follow his advice.*

*[(iv) If the Political Officer concerned finds that the offence with which the European British subject is charged is one against British law, he should, as a rule, require the transfer of the offender for trial by a competent British Court, and should not leave him to be tried by the State Courts, except under very special circumstances and with the express permission of the Local Government (or officer standing in the position of a Local Government).*

*[(v) It is not, however, convenient that the moment a case passes the often narrow boundary which separates civil from criminal questions, the State Courts should be paralysed because one of the parties is a European British subject. Therefore when the criminality involved is trivial or merely technical, the trial should ordinarily be left in the hands of the State Courts. But the Political Officer concerned should learn what passes, and interpose at any stage of the proceedings if under colour of administering the civil law or incidentally thereto the European British subject is made criminally liable in any serious way.*

*[(vi) If he finds the offence to be one against the laws of the State, and not against British law, the Political Officer concerned must decide whether in the particular case justice will best be done by leaving the offender to be tried by the State Courts, referring, if necessary, to the Local Government for guidance.]*

Head (5) in this summary is copied from Sir Mortimer Durand's Volume of 1875 and has been allowed to stand because it seems justified by the Liddell and Travancore and Cochin cases, and no later cases have been found which directly supersede the orders then passed. At the same time in a matter confessedly undefined it seems a question whether the principles numbered (i) to (vi) do not define too much. The tendency of recent decisions has been to revert to the rule of August 1871, that European British subjects shall not be tried by State Courts at all; and when any one of that class is charged with any offence whatever in State territory, a Political Officer will do well to refer the matter before he admits State jurisdiction.

§ 454. Leaving now the British jurisdiction over persons in Native States which is the consequence of certain British laws following the subjects or servants of the British Government as their personal law in State territory, we come next to various kinds of territorial jurisdiction which the British Government has in India but beyond the limits of British India. There is in the first place the full territorial jurisdiction which the British Government has in many cantonments in Native States and in some Residency Bazzars. Secondly, there is jurisdiction ceded by the Native State, as over Railway lands. Thirdly, there is a very extensive residuary jurisdiction, as in Kathiawar and many other places under the political control of the Bombay Government, in the Tributary Mahals of Orissa and Chota Nagpur, in the Feudatory Chiefships of the Central Provinces and in many States in Bundelkhand.

§ 455. But before discussing these kinds of jurisdiction we must notice briefly what has been termed by the Bombay Government "substituted jurisdiction." In 1888, in consequence of an amendment of the law which will be explained in Chapter XVIII, Local Governments were requested to distinguish between British Courts (1) established and (2) continued by the authority of the Governor-General in Council in State territory. The Bombay Government held that Courts of what they styled substituted jurisdiction were neither established nor continued by the Governor-General for the purposes of the law. These were Courts established on behalf of Native States whose affairs are temporarily administered by Government in consequence either of the minority or the incapacity of their Chiefs. The Courts were of various kinds, such as the Court of the Political Agent, Sawantwari,

administering the State;—"Courts of a separate sole administrator as at Porbandar, or of joint administrators as at Ramdurg; Courts of a Council of administration as at Kolhapur, or Courts of a Karbhari, as at Vankanir."

The same letter employed the expressions delegated and residuary jurisdiction. Courts of delegated jurisdiction, the Bombay Government said, were those where the Native State has surrendered its jurisdiction over railway lands or civil stations; and Courts of residuary jurisdiction might be divided into "Courts of which the jurisdiction is clearly defined either by treaty or by notification of the Government of India, and Courts of which the jurisdiction has been regulated by a Resolution of this Government or by custom and practice.

"As regards Courts of delegated jurisdiction, the delegation has ordinarily been reported to and accepted by the Government of India. In all such cases it is proposed that the Courts shall be deemed to be established by the Governor-General in Council, either if the delegation has been formally accepted by the Government of India, or if they have notified the jurisdiction. If, on the other hand, the Local Government has accepted the delegation and established the Courts, they will be deemed to be Courts continued by the Governor-General in Council.

"As regards Courts of residuary jurisdiction, those defined by treaty, as by article 8 of the Kolhapur treaty,<sup>6</sup> dated 20th October 1862, will, with the approval of the Government of India, be held to be established by the Governor-General in Council who ratified the treaty; and the Courts which have been established by a notification of the Government of India . . . . . will be placed in the same class. But in most cases the exercise of residuary jurisdiction has been provided for by the Local Government. Such jurisdiction rests upon a reservation of paramountcy exercised by the Local Government on behalf of the British power in India, and the Courts exercising it should, in the opinion of the Governor in Council, be regarded as Courts established by him and continued by the Governor-General in Council."

§ 456. These views and proposals were approved by the Government of State jurisdiction exercised by India,<sup>7</sup> but we propose to distinguish later British Officers. on between the cession and the delegation of jurisdiction; and it may be doubted whether the term "substituted jurisdiction" is a good one. In the cases intended to be covered by the phrase, British jurisdiction is not substituted for the jurisdiction of the State Courts or authorities. On the contrary, the jurisdiction of the chief authority in the State may be left as it was before; or it may be limited or extended at the discretion of the Paramount Power, and of course internal judicial improvements may be, and often are, introduced. What happens is that the ordinary jurisdiction of the State is temporarily exercised by a British officer; though the powers of the officer may or may not be expressly defined by the British Government. State jurisdiction exercised by a British officer or by a joint administration, as the case may be, seems a better and more accurate expression than substituted jurisdiction.

§ 457. Whatever term be used to denote the exercise of authority here under consideration, there is no doubt as to the actual position of a British Superintendent of a Native State who has been so appointed during a minority or in consequence of misrule. He stands in the place of the Darbar.<sup>8</sup> The position was clearly defined by the Government of India in 1881 in a correspondence relating to the administration of justice in Central India. In Charkhari Captain (soon afterwards Major) Maitland had for some time been the Superintendent of the State (*vide* paragraph § 414 above) and so continued after the suicide of the

The position of a Superintendent absentee Maharaja at Bindraban in the defined in the Charkhari case, 1881. spring of 1880. Malkhan Singh, the successor, was a minor. In Rewa also there was a minority and a Superintendent (who had other duties also) had been appointed (*vide* paragraph § 412). Of the Charkhari Superintendent the Agent to the Governor-General, Sir Lepel Griffin, wrote—"I do not consider it necessary that he should be invested with sessions

<sup>6</sup> The article provides that some of the higher *jagirdars* shall be considered as still in some degree under the supervision of the Political Agent, and that all Criminal cases within their jurisdiction involving death or imprisonment beyond seven years, shall be forwarded for trial before the Political Agent.—Aitchison VII, page 211.

<sup>7</sup> From Bombay, No. 7000, dated October 27, 1888;

Government of India reply No. 1407 I., dated March 30, 1889.—Pro., Internal A., May 1889, Nos. 83 to 120.

<sup>8</sup> See as to this letter from the Government of India, to Bengal, No. 4027 I., dated November 9, 1894, in the case of the extradition of two prisoners who had broken jail in Chang Bhakar and taken refuge in Rewa. Pro., Internal A., November 1894, Nos. 207-209.

powers, as he will not have any international cases to try, all of these going to the Agency Court of Bundelkhand. It will, however, be convenient to allow him 1st class magisterial powers, though he will not ordinarily be called upon to exercise them; all judicial cases being heard by the State Courts, and the functions of the Superintendent being no more than to see that the State officials duly perform their duties." Sir Lepel Griffin referred to the case of Rewa as being a somewhat similar one; but deferred making specific proposals till he should submit a general report on the administration of that State. "The large powers," he added, "which the late Maharaja conferred, during his life time, upon the Political Agent, who ruled his territory for him, lapsed at the Maharaja's death, and seem naturally to have reverted to the Council of the State; the Superintendent losing the ruling power and assuming merely that of advice and control." These remarks appeared to the Government of India to have been made under some misapprehension of the position held by an officer appointed to superintend a Native State, whether during the minority of a Chief or in consequence of failure on the part of the Chief to administer his State properly. "*The Superintendent*," they said,<sup>9</sup> "of a Native State in the position held (for example) by Major Maitland towards the Charkhari State, and by the Political Agent in Baghelkhand<sup>10</sup> towards Rewa, himself *represents for the time the State's Government*, and exercises, under the general control of the Agent to the Governor General, any power, political or otherwise, that it may be expedient for him to use on behalf of the State in any particular case or class of cases. Such officers should administer, as an ordinary rule, directly under the Agent to the Governor General without the intervention of another Political Agent. *The Superintendent should not usually interfere with the judicial work of the State except by way of general superintendence; but when he does so interfere, he acts as the supreme judicial authority in the administration*, reporting his proceedings only to the Agent to the Governor-General. *It would be inconsistent with this view of the Superintendent's position to invest*<sup>11</sup> *such an officer with any magisterial powers under the Criminal Procedure Code, within the particular State of which he is Superintendent, or to intrust him with powers no higher than that of a 1st class Magistrate, while he is at the same time in charge of the Chief executive authority throughout the whole State.* It appears, therefore, to the Governor-General in Council that it would be preferable that Major Maitland, as Superintendent of Charkhari, should remain directly subordinate to yourself, and unconnected with the Political Agent in Bundelkhand, with whose functions he does not appear in any way to interfere beyond having relieved him, for the time, of the charge of the Charkhari State. As regards the position of the Political Agent in Baghelkhand towards the Rewa State, His Excellency does not consider that the large powers which the late Maharaja conferred during his life on the Political Agent have lapsed, and that the Political Agent has since the Maharaja's death assumed merely the power of advice and control. The powers which it was the intention of the Government of India that the Political Agent should exercise since the Maharaja's death in this State have been above explained."

Meanwhile, before these orders, which were dated October 10 1881, had reached Sir Lepel Griffin, he had, on September 3, 1881, requested the sanction of the Governor-General in Council to a death sentence, passed by the Officiating Superintendent of Charkhari, on one Shankar for murder. Sir Lepel Griffin pointed out that the Chief of Charkhari had no power to pass a sentence of death, and he considered that the Superintendent could not have larger powers than the Chief of the State whom he temporarily represented. Sir Lepel Griffin proposed that the Superintendent should be given the powers of a Sessions Judge. "His Excellency in Council," replied<sup>12</sup> the Government of India, "does not consider that there is any necessity for the formal conferment of such powers. The Codes of British Indian Law are not in force in Native States, though they are followed generally as guides by Political Officers who hold charge of the administration of such States. *It is, therefore, preferable to treat the officer*

<sup>9</sup> Pro., Judicial A, October 1881, Nos. 59-61.

<sup>10</sup> This officer was appointed Superintendent of Rewa in addition to his other duties. Government of India, No. 48-G. P., dated February 11, 1882: Pro., Political A,

April 1882, Nos. 234-242.

<sup>11</sup> On this question of investiture, see paragraph § 459 below.

<sup>12</sup> Pro., Judicial A, October 1881, Nos. 7-8.

*superintending the management of a State as possessing the full powers of that State, rather than to confer on him special powers which would have no particular meaning except under the British Codes.*

"It seems to the Governor-General in Council that it might be convenient as affording means of dealing with future cases of the kind, if the precedent adopted in 1867, in the case of Bijawar, Panna, and Baoni<sup>13</sup> were now followed with regard to Charkhari. Certain enhanced powers were then conferred on the Chiefs of those States in consideration of their personal qualifications, and I am to inquire whether, in your opinion, it would not be convenient to confer similar powers on the Superintendent of Charkhari during the time for which the State remains under the direct administration of a qualified European Political Officer." Sir Lepel Griffin agreed to this suggestion which was acted upon. In their final orders the Government of India added—"On the attainment by the Maharaja of years of discretion, it will be a point for consideration, when the management of the State is being transferred to him, whether he is fit to be entrusted with these extended powers. If it should appear that he is fit, the Governor-General in Council, when the time comes, will be prepared to consider the question of granting him a formal *sanad* similar to that granted to the Chief of Panna."<sup>14</sup> This shows that the Government of India defined the judicial authority of the Superintendent, not under any British Indian enactment, but in exercise of the right of the Paramount Power to regulate the extent of State jurisdiction.

§ 458. There is a case of 1870, included in Sir Mortimer Durand's volume,

**The Khairagarh case, 1870.**

which also sets in a very clear light the nature of the jurisdiction exercised by British officers in a State where the Chief has been deprived of powers on account of misrule. In paragraph § 43 we mentioned the supersession of the Chief of Khairagarh for maladministration, and the orders of 1869 that the ordinary District Courts should exercise civil, criminal and revenue jurisdiction in all cases. In February 1870 a difference of opinion arose among the Central Provinces authorities<sup>15</sup> on the question of appeals from the Courts exercising jurisdiction in Khairagarh. [The Judicial Commissioner was of opinion that Khairagarh remained "feudatory but foreign territory," and that Government intended that *the officers who might preside* in the ordinary District Courts should exercise judicial functions in respect of cases appertaining to that territory, not under ordinary law but under the special authorisation of the Governor-General in Council. From this point of view the Judicial Commissioner argued that if corresponding judicial functions were to be exercised in respect of such cases by the officers presiding in those Courts of appeal, revision, and the like, which ordinarily exercised such superior functions in relation to the "ordinary District Courts" in question, the special authorisation of the Governor-General in Council would be necessary. The Chief Commissioner thought appeals should lie from the decisions of the district officers "in the manner prescribed by law in British territory." But he submitted the point for the orders of the Government of India. He asked at the same time for a ruling on a second point, the amenability of the Chief himself to our Courts. Government replied in the following words:—

[ "As the authority over the State of Khairagarh is given not to the Courts as Courts but specifically to the officers who for the time being preside in those Courts, and that not by the general law but by the special authority of the Governor-General in Council, no appeal will lie from the decisions of those Courts to the ordinary Appellate Courts, unless the officers presiding over them for the time being are specially authorised to receive such appeals.

[ "With regard to the amenability of the Chief himself to British Courts, I am directed to state that in taking from him the jurisdiction which he had previously exercised over the inhabitants of his fief, the Government of India had no intention of making him any more than before accountable to British Courts." ]

<sup>13</sup> See *sanad*, No. XXVII, Aitchison, V. page 120.

<sup>14</sup> Pro., Judicial A, January 1882, Nos. 20—21. The question of enhancing the powers of the Bundelkhand

Chiefs is fully treated in paragraphs § 505 and 506 in low.

<sup>15</sup> Pro., Political A, March 1870, Nos. 126—126.



§ 459. The States of Kalahandi, Patna, Sarangarh and Raigarh being under States under management in the Central Provinces, 1890-92. management, it appeared that the Superintendent in the case of the three States first named and the Deputy Commissioner of Sambalpur in the case of Raigarh had been "invested with the powers of a Sessions Court" for the purpose of dealing with criminal cases arising in these territories. As we shall mention below in discussing residuary jurisdiction in the Central Provinces States, it was necessary to determine the character of these Courts with reference to Section 16 of the Prisoners Act.<sup>16</sup> A question incidentally arose whether the powers of these officers ought to be notified in the Gazette by the Governor-General in Council. It was held<sup>17</sup> by the Deputy Secretary and Secretary in the Legislative Department (Messrs. Macpherson and Harvey James) that there was no necessity for a notification. The case, Mr. Macpherson said, was not one of ordinary residuary jurisdiction. He added—"The jurisdiction exercised in these States is only a temporary jurisdiction exercised by the British Government on behalf of, and in the interest of, the incapacitated Chief, and, as such, the orders issued do not seem to require the express authority of the Governor-General in Council or any general publication." These remarks were not expressly endorsed by the Government of India. Indeed the Chief Commissioner was instructed to notify in the Central Provinces Gazette the appointments made by him in these States. But it was not declared that the notification of these appointments was *necessary*: and the views expressed by Mr. Macpherson have been noted here because they appear entirely to coincide with the principles enunciated by the Government of India in the Khairagarh case of 1870 and in the Charkhari case of 1881. It was finally held in the same correspondence after a good deal of discussion that it was unnecessary to invest the Chief Commissioner with the powers of a High Court in respect to the States under management.<sup>18</sup>

§ 460. In summarising what has been said above regarding the position of a British Superintendent temporarily exercising the jurisdiction of a State under British management, we shall include one point relating not to the Superintendent but to the disqualified Chief whom he represents. It might be more symmetrical to introduce that point in speaking of the position of Ruling Chiefs in British territory. But we will let the principle stand here as it happens to have been settled in the Khairagarh case taken from Sir Mortimer Durand's collection and inserted in paragraph § 458 above.

**Summary.**

(1) *When an officer of the British Government is appointed to be Superintendent of a State during a minority or in consequence of misrule, he himself represents for the time the State Government.*

(2) *He is the supreme judicial authority, and in charge of the chief executive authority, in the State under management; and he should not be invested with magisterial powers or the powers of a Court of Session under British laws.*

(3) *In judicial matters he should be held to possess the full powers of the State: but in a State of limited jurisdiction his powers may be increased by order of the British Government, just as the powers of the Chief might be so increased, if he were exercising jurisdiction.*

(4) *If the civil and criminal jurisdiction of a Ruling Chief is taken from him and transferred to British Courts of Law, [it is to be understood that the jurisdiction is given not to the Courts as Courts but specifically to the officers who for the time being preside in those Courts, and that not by the general law but by the special authority of the Governor-General in Council].*

(5) *Accordingly the superior British Courts, as such, cannot exercise functions of appeal, rescission and the like, in respect of proceedings taken under the transferred jurisdiction; but these functions may be exercised by the officers presiding in these Courts, if they are authorised in this behalf by the Governor-General in Council.*

<sup>16</sup> See paragraph § 495 below.

<sup>17</sup> K. W. of Pro., Internal A., February 1892, Nos. 85-86.

<sup>18</sup> Pro., Internal A., July 1892, No. 118. Pro., Deposit I., August 1892, No. 24.

(6) *If a Ruling Chief is deprived of jurisdiction, he is not thereby made amenable to British Courts of Law.*

§ 461. There is a leading case in the volume of 1875 headed '*Jurisdiction in Cantonments within Native States.*' In a note, dated February 5, 1883, Sir Mortimer

Durand says<sup>19</sup> of this case that it was written at the request of Sir Charles Aitchison "and carefully revised and corrected by him with reference to the recent decisions of Government. It may, therefore, be regarded as asserting a political principle once held by the Government of India and not to be set aside without good cause."

The leading case of 1875 is therefore reproduced here without any material modification.

[One of the duties of subordinate co-operation which Native States are bound to render, is that of allowing British cantonments to be located wherever the British Government may determine.<sup>20</sup> This duty is recognised in many of the treaties with Native States as an express consequence of the Protectorate assumed by the British Government. Now that all States alike lie under the ægis of the Paramount Power, all alike are bound, irrespective of treaty provisions, to permit the cantonment of imperial troops in any portion of their territory which it may please the British Government to select for the purpose.

But it is an acknowledged doctrine of international law that the portion of territory occupied by an army is within the dominion of the nation to which the army belongs for all purposes of jurisdiction over persons within the limits of the space so occupied.<sup>21</sup> There is, according to the theory of the law, a continuation or prolongation of the territory to which the army belongs. Therefore, wherever British cantonments are located, the jurisdiction of the British Government is complete within their limits. Accordingly, the British Government has of its own authority, and irrespective of any express consent on the part of the Native Governments concerned, established Courts of Law in its cantonments within Native States, and has applied to such cantonments and Courts such Acts of the British Legislature as it has deemed to be suitable.

[It is true that this has not been the invariable practice. The cessation of the Native jurisdiction has even been expressly stipulated for by treaty, and its existence has been occasionally admitted in other ways. But, although the principle which underlies the whole question of cantonment jurisdiction has thus at times been forgotten or ignored, there are many instances on record in which that principle has been tacitly or expressly asserted. To begin with, a large number of Acts of the British Legislature have been applied to British cantonments in Native States by the sole authority of the British Government, and without any request for the consent of the Native Rulers within whose territories those cantonments were situated. And putting this aside, the jurisdiction of the British Government in cantonments has been asserted in a more distinct and intentional manner than by a mere silent application of Acts. On two or three occasions before 1875, the question of jurisdiction was raised, and the Government of India in each case took the opportunity of expressly enunciating the general principle of international law on which it was then supposed that their jurisdiction depended.

§ 462. [The first of these cases occurred in 1872. Four years before, a resident of the City of Hyderabad had obtained a decree in the court of the Cantonment Magistrate of Secunderabad against the three sons of one Rajama. In execution of this decree the judgment-creditor brought under attachment the house in which the judgment-debtors were residing. Their mother, Rajama, succeeded in getting the attachment removed, on the ground that the house was her own property; but a fresh suit instituted in 1871 resulted in the house being declared liable to sale under the decree, and Rajama's appeal to the Resident was dismissed with costs. Measures were then taken for the attachment of the house. But in the meantime the appellant Rajama, hoping to stay the

<sup>19</sup> Secunderabad Cantonment jurisdiction case:--  
Pro., A., Judicial I., July 1883, Nos. 24 to 29.  
K.-W., page 20.

<sup>20</sup> As to this, see paragraphs § 157 and § 480.

<sup>21</sup> It is very doubtful whether this is a correct exposition of the doctrine of International Law; see below paragraphs § 465 and § 480.

sale, made an application to the Government of India, and also circulated locally a notice asserting that the case was under appeal to the Privy Council.

[This notice raised the general question. The Resident reported the circumstances to the Government of India, and asked for a decision as to "whether the judgments passed on appeal by the Resident's Court in respect of causes of action arising within the limits of the cantonment at Secunderabad and of the Residency Bazars, both of which are situated in foreign territory, are appealable to the Judicial Committee of the Privy Council."

[Mr. Saunders observed that the question had already been decided in the affirmative with regard to the Berars. But the Berars were held by us under treaty engagements, and administered directly under the Government of India by British officers in the same manner as a British province. The case of the *Secunderabad cantonment and the Residency Bazars was widely different. The authority therein exercised by the Resident had been, as a matter of fact, "derived by direct delegation as a matter of convenience and expediency from His Highness the Nizam," and was not based on any treaty engagements.* Moreover, such jurisdiction had been expressly delegated to the Resident, for the time being, at His Highness' Court, and had not been directly conferred upon the Government of India, though of course the Resident acted under Government instructions. Again, the inhabitants forming the civil population of the Secunderabad cantonment and of the Residency Bazars were, with few exceptions, subjects of the Nizam. They had extensive house-property scattered about within the two jurisdictions alluded to, and there was no doubt that the right of property in land belonged to the Hyderabad Government. A consideration of these circumstances led Mr. Saunders to the conclusion that the Privy Council had not jurisdiction in the matter. He thought the Resident's judgments might, perhaps, be appealable to the Governor-General in Council in his executive capacity, "or as an extreme measure, direct to the Government of His Highness the Nizam, by virtue of the sovereign rights vested in him over the whole of his unassigned territories:" but that "under no circumstances would the Judicial Committee of the Privy Council hold themselves to be competent to exercise judicial control over matters adjudicated by the Resident in his political capacity, by virtue of the special authority delegated to him by His Highness the Nizam, or to hear appeals from decisions passed by him in respect of property in houses or land belonging to subjects of a foreign State and situated out of British territory."

[These views did not commend themselves to the Government of India, and orders were issued<sup>1</sup> in the following words:—

["The Secunderabad cantonment is occupied under treaty, which requires the British Government to station British troops within the Nizam's territory. Full and complete jurisdiction accordingly follows *ipso facto* from the occupation of it, under the acknowledged principle of law, that the portion of territory occupied by an army is within the dominion of the State to which the army belongs for all purposes of jurisdiction over persons within the limits of the space so occupied. On the information now before him, His Excellency in Council is not prepared to admit the position assumed in the 9th paragraph of your letter in respect to jurisdiction of the British Government; but if there be any correspondence in your office bearing out your view of the case, I am to request that it may be submitted for the information of His Excellency in Council.

["*But whatever be the foundation on which it rests, the British jurisdiction exists, as a matter of fact, in the cantonment and bazars, and the property in dispute is situated within that jurisdiction. Now the Crown, i.e., Her Majesty in Council, has a prerogative or common law right of entertaining appeals from judgments passed by its own subjects in territories under British jurisdiction. Under these circumstances, His Excellency in Council entertains no doubt that, although the petitioner Rajama may have no right in law to appeal to the Privy Council, it is quite open to the Council, if they be so pleased, to give Rajama permission to appeal, or to entertain an appeal, and to issue to the*

<sup>1</sup> *I'ro.*, Judicial A., August 1872, Nos. 36—43.

Resident any injunctions they think fit. The same would be the case even if the courts which gave judgment had no lawful authority and had merely assumed jurisdiction."

§ 463. [This decision was the first express assertion of a principle which had indeed been frequently violated, but had also been many times tacitly acted upon, and only needed enunciation to be recognised as at once just and necessary. Since then the principle has been asserted more than once. In 1873, when the extension of the Civil Procedure Code to the Nimach cantonment was under discussion, the decision above quoted was referred to, and the notification announcing the extension of the Act was designedly framed<sup>2</sup> so as to exclude all mention of 'existing engagements' or of Sindhia's consent. In the

Various Cantonments, 1873.

course of the same year, a similar ruling was given with regard to the conferment of magisterial powers on military officers temporarily employed as Cantonment Magistrates. In consequence of the representations of the Bombay Government, a Resolution had been passed in March 1872 sanctioning the delegation to the Residents at Aden and Baroda of authority to invest with magisterial powers any military officer whom it might be found necessary temporarily to employ on an emergency as a Cantonment Magistrate. Similar authority was to be conferred on the Agent to the Governor-General in Central India with regard to the cantonment at Mhow, and with regard to Deesa and Nimach upon the Commanding Officers. Authority was accordingly conferred under the provisions of Act VIII<sup>3</sup> of 1869. But shortly afterwards it was pointed out that as this Act was about to be repealed by the revised Code of Criminal Procedure<sup>4</sup> (Act X of 1872), which contained no provision for the continuance of the authority thus delegated, the powers of the several officers above named would apparently cease as soon as the Act came into force. The attention of the Legislative Department was drawn to this defect in the new Code, in order that the necessary provision might be inserted. In the meantime, however, it was observed that, with regard to all cantonments not in British territory, authority could be delegated under Act<sup>5</sup> XI of 1872. The Governor-General in Council "unquestionably possessed" authority to invest officers in such cantonments with all or any of the powers of a Magistrate. Such authority might therefore be delegated under section 4 of the Act, which runs as follows:—

"The Governor-General in Council may exercise any power or jurisdiction which the Governor-General in Council now has or may at any time hereafter have within any country or place beyond the limits of British India; and may delegate the same to any servant of the British Indian Government in such manner and to such extent as to the Governor-General in Council, from time to time, seems fit."

[This view was accepted by the Government of India, and authority was accordingly delegated<sup>6</sup> to the officers previously named, with the exception of the Resident at Aden, the Aden cantonment being British territory.

§ 464. [In June 1874 the question of jurisdiction came up again with regard to the cantonment at Deesa. The Bombay Government forwarded a copy

The Deesa case, 1874.

of correspondence which had taken place with the Political Superintendent of Palanpur as to the insufficiency of the jurisdictions established for the administration of civil justice within cantonment limits. The Government of India was requested "to suspend the operation of section 17 of Act XI of 1841; to confer on the Cantonment Magistrate full original jurisdiction, and on the Political Superintendent the jurisdiction of a District Judge, and on the Government of Bombay the jurisdiction of a High Court, in respect of all cases arising within the Deesa cantonment."

[In the course of the correspondence referred to the Political Superintendent had written as follows:—

"I am unable to find in any of the treaties between the British Government and the State of Palanpur any authority given by the latter to the former to create jurisdiction within the limits of that State.

<sup>2</sup> Pro., Judicial A., August 1873, No. 18.  
<sup>3</sup> The old Code of Criminal Procedure repealed by Act X of 1872.

<sup>4</sup> Repealed by Act X of 1882.

<sup>5</sup> The old Foreign Jurisdiction and Extradition Act Repealed by Act XXI of 1870. The section quoted in the text stands substantially unaltered.

<sup>6</sup> Pro., Judicial B., May 1873, No. 61.

["But as by Act XXII of 1864 Government have invested the Cantonment Magistrate with certain powers, there would certainly appear to be the ground of usage and sufferance to go upon were Government to create any new jurisdiction.

["Other than this precedent, it seems to me that without the consent of the Palanpur State, the Government of India is not fully empowered to create this or other jurisdiction in the Deesa cantonment; for, unless special authority for such a course be mentioned in the treaties between Palanpur and the British Government, I imagine that when powers of jurisdiction to a limited extent only are vested in the Cantonment Magistrate, it must be supposed that to that extent only has the Palanpur Darbar been divested of its natural jurisdiction."

[Upon this the Bombay Government resolved "that the Political Superintendent should inform the Dewan of the intention of Government to supply the Deesa cantonment with jurisdiction for the disposal of civil cases other than small causes."

[No objection was to be anticipated, but if any were raised, it was to be answered by the Political Superintendent and the result reported to Government.

[The several proposals of the Bombay Government were in the end agreed to, with this exception—that the powers of a High Court in respect to cantonment cases were conferred on the High Court of Bombay instead of the Government itself. But in the meantime the question raised by the Political Superintendent was noticed in the following words :—

["With reference to the correspondence which has passed in this case between the Government of Bombay and the Acting Political Agent as to the legal right of Government to create this jurisdiction, I am to observe that full jurisdiction over all *persons and things* within a cantonment in Native territory necessarily follows the occupation of the cantonment by our troops.....

["His Excellency in Council therefore considers that the right of the British Government to create these additional jurisdictions in the cantonment of Deesa is not open to question."

[The Government of Bombay replied that this view of the authority of Government would certainly remove difficulties, but forwarded at the same time a precis of correspondence bearing on the question of jurisdiction in the cantonments of Baroda and Bhuj, which showed that the jurisdiction of the Gaekwar and the Rao had on more than one occasion been expressly admitted.

[This correspondence did not, however, in any way alter the views of the Government of India. The Bombay Government was requested to submit a draft notification to give effect to its wishes regarding the jurisdiction to be exercised by the Cantonment Magistrate at Deesa, and above him by the Political Superintendent of Palanpur and the High Court of Bombay. The right of the British Government to confer such jurisdiction was noticed in the following words :—

["The claim of the Government of India to full jurisdiction over *persons and things* within military cantonments situated in Native territory is not open to question. The concurrence of the Dewan of Palanpur is therefore not required for the conferment of the powers specified in the notification within the cantonment of Deesa."

[For the future, therefore, it is to be an accepted doctrine that within the limits of any portion of Native territory selected for the location of a British cantonment, the Native jurisdiction, civil and criminal, ceases simultaneously with the commencement of occupation. The cantonment becomes for all purposes of jurisdiction British territory, to which British laws may be applied at the will of the British Government. The bare sovereignty, failing any special arrangement to the contrary, remains with the Native State within which the cantonment is situated. But the Native Government can exercise no interference whatever with the jurisdiction of the British authorities; and can claim no right to be consulted before the introduction by the British Government of any measures which the Governor-General in Council may consider necessary for the better administration of the cantonment.]

<sup>7</sup> *Proc. Judicial B.*, July 1874, Nos. 28—27.

<sup>8</sup> Government of India to Bombay, No. 133J., dated September, 6, 1874.

§ 465. We shall presently show that it is not now considered necessary or Authorities in International Law advisable to adduce any doctrine of International Law in support of British jurisdiction in Cantonments and Residency Bazars which are situated in State territory. But as Cantonment jurisdiction was long discussed from the point of view of international law, we may reproduce here some authorities for the doctrine mentioned in the leading case of 1875 which are cited in several places<sup>9</sup> in Mr. Macpherson's *Lists of British enactments in force in Native States*. The authorities are given in a note which stands thus:—

“A foreign army or fleet, marching through, sailing over, or *stationed in*, the territory of another State with whom the foreign sovereign to whom they belong is in amity, are also in like manner exempt from the civil and criminal jurisdiction of the place.’ Wheaton's *International Law*, 8th edition, § 95. ‘A third case in which a sovereign is understood to cede a portion of his territorial jurisdiction was where he allows the troops of a foreign State to pass through his dominions.’ *Ibid.* § 99. ‘If a foreign army be permitted to pass through, or *be stationed in*, the territories of another State, the persons composing that army, or *being within its lines*, are entitled to extra-territorial privileges.’ Phillimore, *International Law*, 2nd edition, Volume I, page 397. When a State allows another sovereign to exercise ‘jurisdiction’ within its territory, the decree of a court exercising such jurisdiction is binding upon every suitor submitting himself thereto with the consent of his sovereign. *The Laconia* (P. C.), 33 L. J. N. S. Prob. Matrim, and Adm., 11; and see Phillimore, *International Law*, 2nd edition, Volume I, § 203; *ibid.*, Volume II, § 33.”

§ 466. As to the application of British laws to Cantonments in State territory, British laws made for or applied to it is only necessary to refer to the full and Cantonments in State territory. elaborate lists given by Mr. Macpherson.<sup>10</sup> If the Governor-General in Council in his executive Council can make special local laws for these Cantonments, *a fortiori* he can apply, with the necessary modifications, laws ready made from the Indian Statute Book. We may therefore cite some of the numerous instances in which special local laws have been made by the Governor-General in Council for Cantonments in State territory. Many special local laws are styled rules but are of the nature of principal rather than subsidiary enactments and so may properly be referred to here. Thus we have in Secunderabad rules of 1883 regulating legal practitioners in the Court of the Resident at Hyderabad and in the courts subordinate thereto;<sup>11</sup> rules of 1884 for regulating the reciprocal execution of decrees passed by the Nizam's City and Suburban Courts, the Cantonment Magistrate at Secunderabad, and the Superintendent of the Hyderabad Residency Bazars, and for regulating the realisation of the State demands of the British and the Nizam's Governments;<sup>12</sup> certain extradition rules of 1884 as between Secunderabad and the Nizam;<sup>13</sup> and the Secunderabad Hackney Carriage Law, 1887.<sup>14</sup> In the case of Deoli the Governor-General in Council declared<sup>15</sup> in 1875 that all laws and regulations that are now or may hereafter be in force in Ajmir and Merwara shall apply to, and have force within, those parts of the Cantonment of Deoli which are situated within the States of Udaipur and Jaipur. Small Cause Court Laws were enacted for Mhow<sup>16</sup> and Nimach<sup>17</sup> in 1889 and for Nowgong<sup>18</sup> in 1891. These illustrations might be multiplied,<sup>19</sup> but the routine of applying laws to and enacting laws for Cantonments in State territory is so well established that it is unnecessary to say more. From the legal point of view there is no substantial difference between the application of a British law to any of these Cantonments and the executive enactment of a special law for any one of them. But from a popular point of view it seems a stronger exertion of legislative authority to make

<sup>9</sup> For the sake of brevity we shall cite Mr. Macpherson's work as *Macpherson's Lists, Central India or Rajputana*, or as the case may be. The note here copied will be found in the Central India, Rajputana and Southern India Volumes at pages 59, 68, and 177, respectively.

<sup>10</sup> *Macpherson's Lists, Southern India*, Secunderabad, pages 180 to 196, *Central India*, pages 60 and 61, Mhow, pages 65 and 66, Nimach, pages 74 and 75, Nowgong, pages 81 and 82, Sipri, page 89, Agar, Gaus, Schore, Sirdarpur, Sutub, page 96.

<sup>11</sup> *Macpherson's Lists, Southern India*, pages 119 to 197.

<sup>12</sup> *Ibid.*, pages 208, 197.

<sup>13</sup> *Ibid.*, pages 198, 208.

<sup>14</sup> *Ibid.*, pages 198, 209.

<sup>15</sup> *Ibid.*, *Rajputana*, page 62.

<sup>16</sup> *Ibid.*, *Central India*, pages 67, 106.

<sup>17</sup> *Ibid.*, pages 76, 147.

<sup>18</sup> *Ibid.*, pages 83, 163.

<sup>19</sup> See for instance notifications Nos. 169 I., 171 I., 172 I., dated January 13, 1892—repealing the Bazar Regulations of the Hyderabad Contingent Stations and substituting others in Bolaram, Raichor and Hingoli.—Pro., Internal A, January 1892, Nos. 71—93. Also the similar notifications Nos. 437-S—98, dated February 25, 1892, applying to Aurangabad, Jalna and Mominabad Pro., Internal A, March 1892, Nos. 79—82.

a law on the face of it manifestly new for a given portion of territory, than to apply to that portion of territory an already existing law extending to the whole or a part of British India.

§ 467. The powers of British Courts or officers in Cantonments in State territory have also been regulated by numerous Powers of British Courts or officers in these Cantonments regulated by the British Government. notifications which, from a legal point of view, might also be considered as special local laws. For all such details we may refer generally to Mr. Macpherson's Lists and to a few notifications which had not been issued when the Lists were brought out. An examination of those lists and notifications will be found to confirm the doctrine laid down in 1875 in the Deesa case that the full jurisdiction over persons and things within military cantonments situated in State territory is not open to question.<sup>20</sup>

§ 468. That doctrine has explicitly or by implication been affirmed on several subsequent occasions. In 1878 The Kherwara case, 1878-79. one Jamadar Gul Khan was shot by Abdulla Khan, both Wiláyatis in the service of the Rao of Jawas, in the house belonging to that Bhumia Chief in the British Cantonment of Kherwara. The question was by whom Abdulla Khan, accused of murder, was to be tried. The Agent to the Governor-General, Rajputana, instructed the Political Agent, Mewar, that if the offence was committed within that portion of the Cantonment which lies within Jawas, the case should be made over to the Rao for trial; but if it was committed within the Udaipur portion of the Cantonment, the case should be heard by the Mewar Darbar. The Agent to the Governor-General also observed that the Political Agent had no legal jurisdiction in the matter and could only act with the consent of the Darbar, and that no seriously inconvenient precedent would be established if, on transferring the case, he explained his reason for doing so to be that no one connected with the British force stationed at Kherwara had been implicated in the murder. The Government of India pointed out<sup>1</sup> that this order might easily be interpreted as admitting jurisdiction within the Cantonment to whatever Chief or Darbar might own the territory upon which it stands, thereby permitting a co-ordinate or divided jurisdiction which might certainly be inconvenient. Moreover the order might be taken to imply a distinction, in regard to the trial of cases, between offenders who are or are not connected with the British troops in the Cantonment. "This view of the jurisdiction in Kherwara," said the Government of India, "is inconsistent with the general policy which has been followed in the matter of retaining full jurisdiction, within our limits, in the hands of our officers, while it is believed to be opposed to the practice which prevails in other cantonments similarly situated."

§ 469. The Secunderabad jurisdiction case of 1883-84 is undoubtedly a leading case for the reason, amongst others, that The Secunderabad Jurisdiction case, 1883-84. it led to the preparation of a valuable note by Sir West Ridgeway, in which, in connection with the origin and nature of our jurisdiction in Secunderabad, he discussed the application of International Law in India and the absence of reciprocity in extradition arrangements with Native States. As to the application of International Law, we have quoted the remarks of Sir Charles Grant in paragraph § 13. The result of the case, so far as it relates to extradition, will be mentioned in Chapter XVII, paragraph § 569. The facts were simple. Sir Steuart Bayley, the Resident, was asked to surrender two natives, subjects of the Nizam, and at the time within the Secunderabad Cantonment, for trial by Hyderabad Courts for offences supposed to have been committed in Hyderabad territory. He replied that the applications were not in accordance with the Hyderabad Extradition Treaty of 1867; to which Sir Salar Jung, the Nizam's Minister, rejoined that extradition

<sup>20</sup> Secunderabad. Criminal Jurisdiction. Notifications Nos. 2523-2524 I., dated July 31, 1890. Civil Jurisdiction. Notifications Nos. 3376-78 I., dated October 10, 1890. Pro. Internal A., December 1890, Nos. 165-179, *Bolarum*. Notification No. 3317, I., dated October 3, 1890. *Hingoli* Notification No. 2007 I., dated May 11, 1891, *Aurangabad and Jalna*. Notification No. 40-45 I., dated

October 2, 1891. *Mominabad*. Notification No. 4607 I., dated No. 24, 1891. *Raichore*. Notification No. 2412 I., dated July 18, 1894. *Mhow, Nimach and Nargong*. Notification No. 50221., dated December 21, 1891. *Macpherson's Lists, Central India*, pages 103-104. *Agar, Guna, Schore, Sirdarpur, Sutra*. Notifications No 50231., dated December 24, 1891, and No. 4370 I., dated November 29, 1892. *Macpherson's Lists, Central India*, pages 42, 88, 177.

<sup>1</sup> Pro. Judicial A., May 1879, Nos. 7-10.

from Secunderabad was not governed by the treaty, but by certain rules of 1875 which he had issued for the guidance of the Hyderabad Courts and which had been approved by the Resident of the day. "Accordingly," said the Government of India,<sup>2</sup> "Sir Steuart Bayley submitted for orders the question whether the treaty of 1867 or the rules of 1875 should be held to apply to the Cantonment of Secunderabad. The answer to this question appeared to him to be connected with the origin and history of British jurisdiction in the Cantonment of Secunderabad. He was doubtful whether it could be maintained that the Nizam's jurisdiction had been altogether ousted from the Cantonment, and consequently whether it would be justifiable to treat his requests for surrender of criminals from within those limits as though they had reference to British territory." The Government of India then stated that the principles underlying the exercise of British jurisdiction in Secunderabad had been explained in the orders of 1872 in Rajama's case (*vide* paragraph § 462 above), and that they saw no necessity for further discussion—"more especially, since it is an admitted fact, to quote Sir Steuart Bayley's words, that 'we have in fact and practice complete civil and criminal jurisdiction at Secunderabad'". Referring to this complete jurisdiction the Honourable Mr. C. P. Ilbert, Law Member of Council, said during the course of the discussion—"On what fact or fiction our authority ought, in theory, to be based, and to what extent it ousts the authority of the Nizam, are questions which, for present purposes, it is unnecessary to determine. It is sufficient that the authority exists, that we should not allow it to be questioned or limited by the Nizam, and that it is not likely to be questioned in any British Court."

§ 470. In 1882 it was proposed to revise the Bazar Regulations of the Hyderabad Contingent—a set of rules passed by the Resident in 1839 and approved by the Government of the Nizam. As a preliminary to the revision, the Government of India were asked to decide whether the Resident and the officers of the Contingent could exercise jurisdiction over property in land within the Cantonments and Military Bazaars of the Contingent situated in Hyderabad territory. The rules of 1839 did not give this jurisdiction but it had been exercised by or under the orders of our officers till 1881. It will be observed that the orders of 1874 and 1875 (*vide* paragraph § 464) asserted jurisdiction over things as well as persons. Mr. Fitzpatrick noted—"It seems to me, apart altogether from any consideration of the analogies presented by the rules of International Law, if a Native State makes over to us a defined local area for the purposes of a Cantonment, it is to be presumed that it concedes to us all powers of government and jurisdiction over that local area. This presumption seems to me to arise as a matter of common sense from considering the nature of our position with reference to the Native State, what sort of thing a Cantonment is, and what sort of thing the administration of a Native State is. It would be impossible to manage a Cantonment in the way it ought to be managed if the Native State had concurrent jurisdiction over it, and so it is natural to presume that the Native State meant to relinquish all jurisdiction over it, or, to put the matter another way, that we meant to have, as we have, a right to insist on having full jurisdiction." The Government of India were disposed to assert complete jurisdiction over things as well as persons within the stations of the Contingent which had defined boundaries, but they first called for certain further information.<sup>3</sup> A long correspondence followed, and in the course of it the Resident in 1886 forwarded a copy of the rules of 1839 as amended and then in force. "The rules," he said, "so far as they relate to the exercise of jurisdiction, have been submitted to, and approved by, His Highness's Government." On this the Government of India remarked—"It was not desirable to submit the matter to the Nizam's Government. The authority for the exercise of criminal or civil jurisdiction in the Contingent Cantonments does not rest upon the consent of the Nizam; and any action tending to an admission that such jurisdiction is exercised on sufferance should be carefully avoided." Eventually the administration of civil and criminal justice by British Courts within the Cantonments of Bolaram, Hingoli, Aurangabad, Jalna, Mominabad and Raichor, was

<sup>2</sup> Pro., A Judicial I., July 1883, Nos. 24—29.

<sup>3</sup> Pro., Internal A., November 1884, Nos. 167—168.

Pro., Internal A., April 1885, Nos. 166 and 167.

<sup>4</sup> Pro., Internal A., October 1886, Nos. 238—240.



authorised by a series of notifications.<sup>5</sup> In the same Cantonments the old Bazar Regulations were repealed and new rules enacted.<sup>6</sup>

§ 471. One Chimnabi, a private in the 32nd Regiment of Madras Infantry, Chimnabi's case, Secunderabad, 1887—1889. was convicted, in 1887, of committing murder in the Secunderabad Cantonment.

He was tried by the First Assistant to the Resident sitting with a Hyderabad official as Joint Judge. The Resident explained that the practice of holding sessions trials in a mixed court of this kind was an old one and might have originated in a suggestion made by the Government of India in 1864. The Government of India again referred to the rulings of 1872 and 1883 regarding jurisdiction in Secunderabad and pointed out that the Code of Criminal Procedure, which had been applied to Secunderabad in 1882, did not provide for two Sessions Judges sitting as a bench. They directed the discontinuance of the practice and called for a full report on the arrangements for the administration of civil and criminal justice in the cantonment.<sup>7</sup> The administration was placed<sup>8</sup> upon a regular footing in 1890.

§ 472. The same thing was done in the Baroda Cantonment in 1886 and 1890. It seems worth while to quote a part of the notification of 1890 (omitting the list of Acts applied); because it appears to be an excellent precedent as to the manner in which Acts may be applied in such cases without practically redrafting them or setting out a long string of modifications. The notification runs:—

“The provisions, so far as they can be made applicable in the circumstances for the time being, and as amended for the time being by subsequent enactments, of the Acts specified in the schedule to this part, are hereby applied to the said Cantonment.

“For the purposes of the said Acts, the Agent to the Governor General at Baroda shall be deemed to be the Local Government.

“For the purpose of facilitating the application of the said Acts to the said Cantonment, any Court in the Cantonment may construe any provision in any such Act with such alterations not affecting the substance as may be necessary or proper to adapt it to the matter before the Court.”

In the correspondence which led in course of time to this notification the Baroda Darbar claimed jurisdiction over immoveable property in the Baroda Cantonment and generally all jurisdiction there which had not been delegated to British officers by the Baroda Darbar. The Agent on February 4, 1886, in a letter to the Darbar mistakenly admitted that these claims, if maintained “on purely legal grounds” appeared to be “within its rights.” This position he considered inexpedient and he expressed an intention of referring the matter for the orders of the Government of India. Apparently he had not seen the orders of 1874 and 1875 (paragraph § 464) of which copies were sent demi-officially to his successor; who was instructed to explain the situation to the Darbar and to intimate that the Government of India would not think of altering the decision of 1874 and 1875. “It involves,” so they said<sup>9</sup> “a principle which has been steadily upheld in dealings with all the great Chiefs.”

§ 473. A somewhat similar mistake was corrected in 1892 in a similar manner.<sup>10</sup> It was proposed to apply certain Acts to the Erinpura Cantonment and to confer certain judicial powers on the Commandant of the Erinpura Irregular Force. The Cantonment is situated in Sirohi territory. The Sirohi Darbar agreed on condition that the Acts and jurisdiction should not apply except when British subjects were concerned. The Government of India wrote demi-officially to the Agent to the Governor-General, Rajputana:—

“It is somewhat unfortunate that a reference in the matter should have been made to the Sirohi Darbar. The accepted opinion in regard to such cases is that whenever a British Cantonment is located in the territories of a Native State, the complete civil and criminal jurisdiction of the British Government

<sup>5</sup> The references to the notifications are given in the footnote to paragraph § 467.

<sup>6</sup> Pro., Internal A., January 1892, Nos. 71—93. Pro., Internal A., March 1892, Nos. 79—82.

<sup>7</sup> Pro., Internal A., October 1889, Nos. 142—146.

<sup>8</sup> Pro., Internal A., December 1890, Nos. 165—179.

<sup>9</sup> Pro., Internal A., December 1886, Nos. 92-95. The notification of 1890 will be found in Pro., Internal A., January 1891, Nos. 133-160.

<sup>10</sup> Pro., Internal B., October 1892, Nos. 145-146.

follows *ipso facto* from such location. Accordingly the general, and of late years the invariable, practice has been to assume the existence of our jurisdiction in such cases without reference to the Darbars. It is true that there have been exceptions to this rule but they are now regarded as deviations from the correct procedure not to be treated as precedents. Moreover, the conditions attached by the Sirohi Darbar in this instance to their consent to the jurisdictional arrangements proposed might, if they were treated as more than a dead letter, prove practically inconvenient."

§ 474. The Bhuj Cantonment case, decided in 1890, is an important one.

The Bhuj Cantonment case, 1890-91. The arrangements for law and jurisdiction were settled<sup>11</sup> in 1891 and 1892 but we have here to remark on some of the preliminary correspondence. We may however note in passing that one<sup>12</sup> of the notifications of 1891 contains clauses facilitating the application and construction of Acts similar to those contained in the Baroda notification of 1890 of which a part has been quoted in paragraph § 472.

The letter of the Bombay Government and the Government of India reply<sup>13</sup> which are here material are dated respectively January 8, 1890, and December 19, 1890.

*First*, the Bombay Government reviewed "the whole subject of the basis of the jurisdiction exercised by Government or its officers within the limits of Native States under its political control." The main conclusion was that "if the entire legislation for any area is effected by Government, the assumption of sovereignty is complete." On this the Government of India observed that no advantage appeared likely to be gained by entering upon this discussion.

*Secondly*, the Bombay Government proposed that the Cantonments and civil stations within the confines of Native States over which the Government of Bombay in Council exercises authority and jurisdiction should be declared to be a part of the Presidency of Bombay. The Government of India did not consider such a declaration to be expedient with reference to any of the Cantonments or civil stations in question.

*Thirdly*, the Bombay Government held that it would be desirable to substitute the Bombay High Court for the Governor in Council as a final court of appeal, both as regards cases arising in Cantonments and as regards cases arising in civil stations which are enclaves of territory under the jurisdiction of the British Government within the confines of Native States, provided that this course could be legally adopted. On this point they added—"By 24 and 25 Vict., c. 104, the jurisdiction of the High Court extends to the Presidency for which it is established, and by sections 15-16 and 26-27 of the Letters Patent the High Court is constituted a Court of Appeal from such Courts as were placed under the Courts which it superseded by any law made by the Governor-General in Council before the issue of the Letters Patent. It is doubtful, therefore, whether the Legislative Council of the Governor-General can bring these areas under the High Court of Bombay." To this the Government of India said—"As regards the substitution of the Bombay High Court for the Governor in Council as a final Court of Appeal from the Courts situated in such localities, the Government of India recognise the difficulties in the way of the proposal, and have no desire to alter the present system."

*Fourthly*, the Bombay Government forwarded with their concurrence a minute by Sir Raymond West, dated June 5, 1890, in which he expressed the view that the Government "should account to the Native State for the whole or a stipulated portion of the amounts realised" by taxation or the vend of liquors and drugs or from other imports in such Cantonments and stations as were under consideration. This view the Government of India could not accept as a general principle. "Where," they said, "no agreement exists as to the apportionment of such revenue, its disposal must rest with the authority by which it is imposed."

On the first and second of these decisions we may observe that, as implied in several of the discussions above abstracted, it does not really seem to be a matter of much importance upon what theory we justify our Cantonment jurisdiction. As a matter of common sense, we must have it; and when we have it, the fact suffices

<sup>11</sup> Pro., Internal A, July 1891, Nos. 141-142.  
" " June 1892, Nos. 271-272.

<sup>12</sup> No. 2840I., dated July 9, 1891.

<sup>13</sup> Pro., Internal A, February 1891, Nos. 236-246.

without theory. The elaborate arrangements for law and justice in Cantonments and similar areas in State territory which have been made under the Foreign Jurisdiction and Extradition Act and are for the most part set out in Mr. Macpherson's Lists, rest upon the fact that these areas are State territory. To upset this fact by annexation, apart from obvious political objections, would be to undo the work of years.

The third decision shows that the ruling in the Deesa case of 1874, mentioned in paragraph § 464, by which certain powers were to be conferred on the High Court of Bombay, cannot now be regarded as a precedent.

The fourth decision enunciates a fiscal principle of some importance which does not appear to have been laid down previously.

§ 475. It is probably safe to say that jurisdiction within Residency limits and in Residency Bazars must be dealt with on the same principles as Cantonment Residency jurisdiction.

In the case of the Udaipur succession, 1874 (*vide* paragraph § 324), Sir Lewis Pelly cautioned the Political Agent not "to instal the Maharana in the British Residency which is *quasi*-British territory," and this message was approved by Government. In a case of 1874-75 in which the Second Assistant at Indore had refused to execute the decree of the Judge at Agra, it was contended that the Court of the Second Assistant had been established by the Agent to the Governor-General, and that the ground assigned by the Darbar for the Residency was not British territory. On this Sir Mortimer Durand noted—"That the Paramount Power should have full jurisdiction within Residency limits seems to me an obvious necessity;" and Sir Charles Aitchison<sup>14</sup> followed this up by saying—"for all practical purposes of jurisdiction, civil and criminal, the Residency has always been treated as territory for which we alone have jurisdiction." In 1890 the Agent to the Governor-General at Baroda suggested the issue of a notification authorising him and his Assistant to hold their Courts in the limits of the Baroda Residency or in any part of Baroda territory convenient to them. The Government of India did not consider this necessary. They said—<sup>15</sup> "It may safely be assumed that the Governor-General in Council has full jurisdiction within the Residency." The Maharaja of Mysore has assigned to the exclusive management of the British Government the British Residency at Bangalore and the grounds attached thereto, and has renounced the exercise of all jurisdiction in the lands and buildings so assigned.<sup>16</sup> In the Indore and Hyderabad Residency Bazars certain Acts have been locally applied, certain powers have been conferred on officers, and certain special local laws have been made.<sup>17</sup>

§ 476. But as regards Residency jurisdiction at Indore and Hyderabad some-thing more remains to be said. In 1890 in connection with a proposal to apply the Probate and Administration Act of 1881 to the Hyderabad Residency Bazars, Sir Dennis Fitzpatrick, then Resident, was asked for a full expression of his opinion upon the question whether enactments of the British Government can be formally applied within the limits of these Bazars without the consent of the Nizam's Government.<sup>18</sup> Sir Dennis replied on October 9, 1890—"The practice as regards obtaining the previous concurrence of His Highness's Government in each individual case to legislation proposed for the Hyderabad Residency Bazars seems to have varied from time and time. Such concurrence was not obtained on the last occasion on which legislation took place, *viz.*, in the case of the notification of the Government of India in the Foreign Department, No. 1637 I., dated the 22nd May 1885, on the subject of the establishment of Criminal Courts within the limits of these Bazars.

"As regards the principle applicable, something would depend on the terms on which we originally obtained the possession and administration of the Bazars, though these terms might, of course, be considerably modified by subsequent practice. Unfortunately there is no record of these terms now traceable in this office, and, that being so, I can form an opinion on the point raised by the Government of India only by looking to our position in regard to the Bazars generally. Upon this I should say that it is closely analogous to our position in a Canton-

<sup>14</sup> Pro., Judicial B., November 1874, Nos. 4-6.

<sup>15</sup> July 1876, Nos. 13-14.

Quoted from page 16 of K.-W. in Ghulam Dastagir's case. Pro., Internal A., February 1872, Nos. 222-236. For Sir Lewis Pelly's message see Pro., Polt. A., Nov. 1874, No. 117.

<sup>16</sup> Pro., Internal A., January 1891, Nos. 133-160.

<sup>16</sup> Notification No. 1195, dated September 22, 1888. Macpherson's Lists, Southern India, Madras and Mysore, page 181.

<sup>17</sup> Macpherson's Lists, Southern India, Hyderabad, pages 229-237; Central India, pages 180-185.

<sup>18</sup> Pro., Internal A., August 1890, Nos. 68 to 70.

ment established in a Native State, where it is admitted that our settlement on the land, whether obtained under an express grant or with the tacit acquiescence of the native power, or otherwise, carries with it a full power of legislation. It seems to me that it would be impossible for us to take upon ourselves the responsibility of administering a tract like the Residency Bazars, unless this power was conceded to us, and that, in the absence of any clear proof to the contrary, it must be taken to have been conceded to us. This, if I recollect rightly, was the view that prevailed when the question came before the Government of India some years ago in the case of a similar Bazar—I think it was the Residency Bazar at Indore—and I would accordingly propose that, until the question is raised from some other quarter, we should act on the assumption that we have full powers of legislation. I would, however, propose to use these powers cautiously, and only when it seemed to be absolutely necessary to do so.”

This view was practically accepted by the Government of India who, without directing any communication to be made to the Nizam's Government, forthwith applied the Probate and Administration Act, 1881, and two other Acts to the Hyderabad Residency Bazars, and sent a copy of the notification to Sir Dennis Fitzpatrick in reply to his letter.<sup>19</sup> They further—again without any reference to the Nizam—established Civil Courts and arranged generally for the better administration of civil justice in these Bazars and made and notified a Hyderabad Small Cause Court Law.<sup>20</sup> As mentioned by Sir Dennis Fitzpatrick the exercise of criminal jurisdiction had been regularised<sup>21</sup> in 1885.

§ 477. In the Indore case of 1884-85 which Sir Dennis Fitzpatrick recollected he had noted as Secretary in the Civil jurisdiction within Indore Residency limits, 1885. Legislative Department—“I fancy the Indore Residency Bazar stands on much the same footing as a Cantonment;” and had advised that whatever was done should be done without reference to Maharaja Holkar. This advice was accepted and a notification was issued on May 14, 1885, which recited—“Whereas under the existing practice the Attaché of the Central India Agency for the time being, and the First Assistant to the Agent to the Governor-General in Central India, for the time being, and the Agent to the Governor-General in Central India for the time being exercise certain civil jurisdiction *within the limits of the Indore Residency*; and whereas it is expedient to remove all doubts as to the legality of their exercise of those powers:—In virtue of the authority conferred by sections 4 and 5 of Act XXI of 1879 (The Foreign Jurisdiction and Extradition Act, 1879), and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to issue the following notification.” The necessary powers were then conferred with retrospective effect.<sup>22</sup>

478. The case of the Kolhapur Residency is somewhat peculiar. Sir A. Scoble, the Law Member of Council, inclined to the view that in 1886 we retroceded jurisdiction over a part of the Kolhapur Cantonment surrendered to the State and retained it in regard to the Residency and Civil Station. The Raja of Kolhapur is bound under treaty to admit British troops into the State, and since 1827 British troops had, with the exception of short intervals, occupied a Cantonment there. At the end of 1885 the British garrison was withdrawn; and terms were offered to and accepted by the Kolhapur Darbar in a memorandum which stated:—

“In view of the withdrawal of British troops from Kolhapur, it is no longer necessary to keep possession of the whole Cantonment, and it will suffice to retain the British Telegraph and Post Offices and such buildings and area as will provide extemporised shelter for British troops in the event of their presence being suddenly required.

“The British Government will, however, reserve its right to re-occupy the land now to be surrendered, and in view of that contingency the Kolhapur State will not permit it to be used so as to destroy its suitability for the purpose for which it has hitherto been used.”

The limits of the land to be retained were described in the same document, and the Bombay Government proposed to define the British jurisdiction to be

<sup>19</sup> Pro., Internal A., March 1891, Nos. 25-26.  
<sup>20</sup> “ “ February 1891, Nos. 272-275.

<sup>21</sup> Pro., Internal A., June 1885, Nos. 29-36.  
<sup>22</sup> “ “ “ Nos. 251-260.

exercised over the Residency and the new Civil Station thus marked out. This was done by a notification, dated November 9, 1887, which applied certain Acts and conferred civil and criminal powers on various authorities, but made no reference to the origin of our jurisdiction. It merely recited,<sup>23</sup> as a fact, that "the Governor-General in Council has power and jurisdiction within the Residency of Kolhapur and the land situated within the limits specified and described in the subjoined schedule, and forming the Civil Station of Kolhapur."

§ 479. The most important case relating to Cantonment and residency jurisdiction which has arisen of late years is that of Ghulam Dastagir, 1892. This case has already been mentioned in paragraph §13 where we noted that the present tendency is to abandon the doctrine of ex-territoriality as the basis of Cantonment jurisdiction. Ghulam Dastagir, a subject of the Nizam, was sentenced to death for a murder committed within the limits of the Hyderabad Residency Bazars. The throat of a boy was cut, apparently for the sake of his ornaments. The convicted man petitioned the Governor-General in Council, and the official orders containing no trace of the extremely full discussion which occurred in the Government of India, merely stated "that the Governor-General in Council, while seeing no reason to question the propriety of the conviction, is nevertheless pleased, in the exercise of his prerogative of mercy, to commute the sentence of death passed on Ghulam Dastagir to one of transportation for life." This order was passed at a Meeting of Council and the case had previously been circulated to and noted on by every Member of Council.

The trial was held by Mr. J. A. Crawford, the First Assistant Resident, and an appeal was rejected by the Resident, Mr. T. J. C. Plowden. Mr. Crawford acted under a notification, dated May 22, 1885, which said:—

"The First Assistant to the Resident at Hyderabad for the time being shall exercise, within the limits of the Hyderabad Residency Bazars, the powers of a Court of Session as described in the Code of Criminal Procedure."

The point taken was that the trial was vitiated because it was held without a jury or assessors and was not conducted by a Public Prosecutor, the provisions of sections 268 and 270 of the Code of Criminal Procedure being thus disregarded. The Code had never been applied to the Hyderabad Residency Bazars. It is to be gathered from the discussions that the general opinion of the Council was that in conferring upon the First Assistant the powers of a Court of Session, the Government of India conferred upon him power to try such offences and pass such sentences as are authorised for a Court of Session, but did not bind him down to the procedure prescribed by the Code for a Court of Session in British India.

Next, it had been the practice both in Secunderabad and in the Residency Bazars for a Hyderabad official to sit with the First Assistant as Judge in Sessions trials. As we have seen (*vide* paragraph § 471) this practice was discontinued in Secunderabad under orders passed by the Government of India in 1889. In the present case it was thought expedient to discontinue the practice in the Bazars also, and Mr. Crawford therefore sat alone. This, it was urged, amounted to the assumption of a new jurisdiction. Here the Viceroy, Lord Lansdowne, was "disposed to accept Sir Dennis Fitzpatrick's view" (quoted in paragraph § 476) "and to say that we can admit no distinction between Bazars and Cantonments." His Excellency further pointed out that in Rajama's case of 1872 (*vide* paragraph § 462) "an attempt to set up this distinction was made by Mr. Saunders, but in the orders finally issued by the Government of India, it was stated confidently that 'whatever be the foundation on which it rests, the British jurisdiction exists, as a matter of fact, in the Cantonments and Bazars.'"

Other objections raised the whole question of ex-territorial jurisdiction in Cantonments and Residency Bazars in India generally. It was noted (1) that unless there had been an explicit cession of full criminal jurisdiction in the Residency Bazars by the Nizam's Government a British Court could have no jurisdiction to try a man who is not a British subject for an offence not committed on British soil; and (2) that there is no principle of International Law that occupa-

<sup>23</sup> Pro., Internal A., July 1887, Nos. 306-317.

Pro., Internal A., January 1888, Nos. 196-199.

tion of a place by an army carries with it full civil and criminal jurisdiction over all persons and things therein. Either, it was said, the occupation is by a hostile army, and then the only principle applicable is *væ victis*, or it is by a friendly army, and there is no precedent to the effect that such occupation *ipso facto* confers any criminal jurisdiction whatever, or any civil jurisdiction except in connection with the land occupied; though, of course, full jurisdiction over the army itself, and every one even remotely connected with it, is inevitable and admitted. For instance, it was added, in the Peninsula it was never suggested that interference was exercised with the authority of Portuguese Courts over Portuguese subjects.

§ 480. These remarks led to a note or minute by Lord Lansdowne,<sup>24</sup> dated February 9, 1892, from which we have already quoted a few words. "As to the origin of our jurisdiction," His Lordship said, "we may, I think, at the outset put on one side the contention that it has any connection with International Law. Those who have written on the subject have sometimes found it convenient to use the phraseology of International Law in treating of our relations with the Native States, and to refer to doctrines of International Law for purposes of illustration. It has, however, been again and again laid down by very high authorities that our relations with Native States are not those which exist between one nation and another." Lord Lansdowne then quoted the opinions expressed by Mr. Fitzjames Stephen and Mr. Hobhouse in the Travancore case and the exposition of principles given by the Government of India in 1873 (*vide* paragraphs § 3 and § 4), and continued—"our jurisdiction in Native States must, I take it, be regarded as one of the incidents of what Sir Charles Aitchison called our 'paramount supremacy,' which he described (*The Native States of India*, page 12) as 'having been established partly by conquest, partly by treaty, partly by usage'; and he added 'that for the proper understanding of the relations of the British Government to the Native States regard must be had to the incidents of the *de facto* supremacy, as well as to the treaties and charters in which reciprocal rights and obligations had been recorded.'"

Lord Lansdowne, therefore, was not prepared to admit that, in the case of offences committed in such places as Cantonments or Residency Bazzars in State territory, a British Court has no jurisdiction to try a person who is not a British subject, unless there has been an explicit cession of full criminal jurisdiction by the State concerned. "I should," he remarked, "be inclined to say, not only that the case was one in which usage and custom can confer such a jurisdiction, but that even if *local* usage and custom cannot be proved by specific examples, the right is one inherent in the British Government and inseparable from the paramount supremacy of which Sir Charles Aitchison wrote.

"The case with regard to Cantonments is well stated by Sir Charles Aitchison in a subsequent passage<sup>25</sup> (page 20), where he points out that it is the duty of the Native States, resulting from their position of subordination, to permit Cantonments to be located and forts occupied, wherever the British Government may determine. 'Wherever,' he says, 'such Cantonments are located, the jurisdiction of the British Government follows from the occupation of them. Occasionally, indeed, treaties stipulate that the jurisdiction of a Native Government shall cease, *but this is quite unnecessary.*'" As to the similar statement in the leading case of 1875 (*vide* paragraph § 461) Lord Lansdowne thought it a little weakened by the reference to the "acknowledged doctrine of International Law." He preferred not to depend on this analogy, but "to treat the case as one in which references to International Law are out of place." Lord Lansdowne then cited the Deesa Cantonment case (*vide* paragraph § 464) as one much to the point, and went on to say—"The right which we have claimed, and again and again asserted, to legislate for these Cantonments is, I think, conclusive upon the point of jurisdiction. The admission that we have this right of legislation is altogether inconsistent with the contention that our jurisdiction depends upon the consent of the States concerned, or that our relations with them are in any sense international relations." Finally, Lord Lansdowne summed up what he had written in these words:—"In my opinion, we should lay

<sup>24</sup> The papers in Ghulam Dastagir's case, including Lord Lansdowne's Minute, are in *Pro., Internal A.*, February 1892, Nos. 222-236.

<sup>25</sup> This passage is referred to in paragraph § 157,

down, once and for all (1) that we claim jurisdiction in these Bazars as a right inherent in our sovereignty, and without reference to expressed or implied concessions; and (2) that our jurisdiction permits us to act independently of the Local Courts."

As said above, these conclusions were not embodied in any official orders. But they will doubtless be duly weighed should similar questions arise again. As to the far-reaching effect of the principle under discussion, it may be mentioned that in Ghulam Dastagir's case the Foreign Office reported that we occupied without, so far as was known, any express cession of jurisdiction, the following localities in State territory, *viz.*, Secunderabad, the Hyderabad Residency Bazars, the Hyderabad Contingent Stations (Bolaram, Aurangabad, Jalna, Hingoli, Raichor, Mominabad), Deoli, Erinpura, Kherwara, the Indore Residency Bazar, Nimach, Nowgong, Sutna, Sipri, Sehore, Guna, Agar, Baroda Cantonment, Bhuj, and Deesa. As to Kolhapur, the acceptance of terms by the State in 1886 might perhaps amount to a cession, but the better opinion seemed to be that of Sir Andrew Scoble, *viz.*, that we retroceded jurisdiction of our own. It will be found by reference to Mr. Macpherson's Lists and to paragraphs § 473, § 472, § 474, § 464, and § 478, as regards Erinpura, Baroda Cantonment, Bhuj, Deesa, and Kolhapur, respectively, that the British Government exercises jurisdiction in every one of the places named above as places in respect of which there has been no traceable cession of jurisdiction.

§ 481. We have given the facts and discussions about Cantonment and Residency jurisdiction at considerable length on account of their importance and interest. They illustrate particularly well alike the influence of doctrines of International Law upon Indian political consultations and the actual unsuitability of one of these doctrines, when brought to a rigid test, for the regulation of Indian political affairs. It is trite but true that the east is not the west, and that a number of States in common subordination to a Paramount Power is not a group of independent political communities. Beyond this it seems unnecessary to advance or support any theory of the foundation of British jurisdiction in Cantonments, Residencies and Residency Bazars in State territory. Our summary therefore may be tolerably short:—

(1) *Whenever a British Cantonment is established in State territory [the complete civil and criminal jurisdiction of the British Government over persons and things follows ipso facto within the limits so occupied].*

(2) *This jurisdiction is independent of the consent of the State where the Cantonment is situated.*

(3) *Accordingly, in numerous Cantonments in State territory, where there has been no known cession of jurisdiction by the State concerned, the British Government has applied British Acts, defined the civil or criminal jurisdiction of British Courts or officers, and put in force special local laws made by the Governor-General in Council.*

(4) *When it appears to be necessary to do any of these things in any Cantonment in State territory, the Political Officer, whose duty it is to make the proposal, should do so without consulting the Darbar.*

(5) *British Acts may be applied to Cantonments in State territory without detailed modifications, and with power to the Courts to construe them with such alterations not affecting the substance as may be necessary to adapt them to the matter before the Court.*

(6) *There is a distinction between full sovereignty and complete civil and criminal jurisdiction combined with the power of legislation. It would be inexpedient to declare that British Cantonments in State territory are part of British India.*

(7) *There is no general rule as to the disposal of the proceeds of taxation in Cantonments in State territory, except that where no agreement exists as to the apportionment of revenue so obtained, its disposal must rest with the authority by which the taxation is imposed.*

(8) *If an officer has been invested in an area under British jurisdiction in State territory, to which the Code of Criminal Procedure has not been applied, with certain powers as described in that Code, he is not thereby bound to follow in everything the procedure of that Code when he is holding the trial of a subject of a Native State.*<sup>26</sup>

(9) *For purposes of civil and criminal jurisdiction it is probably necessary to treat British Residencies and Residency Bazars in State territory precisely as though they were similarly situated Cantonments.*

---

<sup>26</sup> The case might differ if he were trying a British Indian subject, because under section 8 of Act XXI of 1879 (The Foreign Jurisdiction and Extradition Act) the law relating to offences and to criminal procedure for the time being in force in British India extends, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.



## CHAPTER XV.

### RESIDUARY, CEDED AND DELEGATED JURISDICTION.

§ 482. In the last chapter we considered certain kinds of jurisdiction exercised by the British Government in State territory independently of any assent of the Rulers of the States concerned. No assent of any other authority is necessary to enable the British Government to exercise jurisdiction over British subjects, or within the limits of cantonments, and probably also of residencies and residency bazars, in State territory. If in any case there is an express grant of jurisdiction to the British Government, the grant may be regarded as legally superfluous, though of course adequate political motives for obtaining it must have existed at the time when it was made. So also the State jurisdiction exercised by British officers in States under management on account of the minority or other incapacity or misrule of the Chief is a jurisdiction temporarily assumed by the Paramount Power on behalf of the State and does not proceed from the grant of any State authority. We have now to speak of residuary jurisdiction where, as in the other cases already discussed, no consent on the part of the Darbars is necessary; and of ceded and delegated jurisdiction, in which cases there is an express grant of jurisdiction made by a Ruling Chief to the British Government or some British court or officer, and the grant is formally taken as the basis of the consequent arrangements.

§ 483. First, then, what is the residuary jurisdiction of the British Government? Full civil and criminal jurisdiction in judicial matters includes authority to determine all civil and criminal cases of whatever description arising in a certain area; but many Ruling Chiefs, as we have frequently seen, exercise only a limited jurisdiction. Either sentences of death passed by them must be referred for confirmation by some British authority, or in this and other ways their powers of dealing with judicial cases are limited to cases of certain classes or by restrictions on the extent of the penalties which they may inflict. In the residue of cases arising in State territory beyond the powers of Chiefs so limited, the British Government exercises jurisdiction through its officers, and the jurisdiction so exercised has acquired the name of residuary jurisdiction.

§ 484. In a letter<sup>1</sup> of the Bombay Government, dated April 25, 1891, there is a very good description of the extensive residuary jurisdiction of the British Government in the Bombay Presidency and of the manner of its exercise. The letter states that in Palanpur and the Mahi and Rewa Kantha, covering an area of 22,055 square miles, there are not more than nine Chiefs who possess either first or second class jurisdiction. "There are numbers," the letter continues, "of so-called Chieftains who have no jurisdiction at all, and the rest are only of petty rank and invested with petty powers. From Guzerat to Dharwar, through the whole length of the Deccan and into the Southern Mahratta country, there are Treaty *Jagirdars* and small Chiefs who have been entrusted with the largest possible share of their sovereignty which it is safe to give them, and in many cases their jurisdiction ends with a power to try cases in which seven years' imprisonment may be awarded. The position occupied by these Native States has given this Government no alternative, but to add the duties of Political Agent to that of the District Collector. Apart from the danger of friction owing to dual control, the distances are too great to be commanded by a single Political Officer, whilst the work within reach of one officer

<sup>1</sup> No. 2603, dated April 25, 1891.—*Proc., Internat. L.*, September 1893, Nos. 181-193.

would not be sufficient to occupy his attention. Thus the Bhor Jagir is attached to Poona, the Akalkot Jagir to Sholapur, the Phaltan to Satara, the Jath to Bijapur, and the Savanur Jagir to Dharwar. A glance at the map will show that no single officer could manage even these five small jagirs; and in fact there is no parallel for this state of affairs in any other part of India."

§ 485. In another letter<sup>2</sup> the Bombay Government said: "In many of the Native States of the Presidency the Chiefs exercise such jurisdiction only as they are considered competent to exercise—in some cases none, and the other jurisdiction is exercised by Political Agents or other officers appointed by Government. It has also been directed that the Indian Penal Code shall be applied by the courts of these officers and that their procedure shall be regulated by the Criminal and Civil Procedure Codes." When a so-called Chief holding an estate in territory beyond the limits of British India exercises in that estate no civil or criminal jurisdiction at all, so that the whole of it is exercised by some British authority, the term residuary jurisdiction, as applied to the British jurisdiction, is not, perhaps, quite appropriate. But there is at present no other term for British jurisdiction exercised under these circumstances in State territory; and it is believed that this peculiarity is nowhere to be found except in the Bombay Presidency. As an instance of the whole jurisdiction being exercised by British political authorities, we may mention the village of Kamadhia, belonging to Mir Zulfikar Ali. The Bombay Government reported in October 1894 that no one exercises jurisdiction in Kamadhia except the Thanadar and superior Agency Courts.<sup>3</sup> So, again, in June 1894 the Bombay Government said<sup>4</sup> of the estate of Virsoda in the Mahi Kantha that "it consists of a village in the Katosan Thana circle, in whose proprietors jurisdictionary rights have never vested." Elsewhere<sup>5</sup> it was reported that "the Talukas under Thanas never exercised jurisdiction. It has always been exercised for them by us."

§ 486. The information possessed by the Foreign Department regarding the powers of Chiefs in the Bombay Presidency is unfortunately defective. A statement showing the jurisdiction exercised by the various Chiefs was indeed received in 1890, but the Government of India were lately informed<sup>6</sup> that there were mistakes in it, while a general revision of the list was deprecated. The

statement, however, as it stands is quite sufficient for the purpose of illustrating the character of residuary jurisdiction in the Bombay Presidency. Thus, according to this record, the powers of the several classes of Chiefs in Kathiawar are as follows:—

Class of Chiefships.	Powers.	
	Criminal.	Civil.
First Class . . .	Full, subject to certain conditions . . . . .	Full.
Second Class . . .	Ditto . . . . .	Do.
Third Class . . .	Seven years' rigorous imprisonment and fine up to Rs. 10,000	Can try suits up to the value of Rs. 20,000.
Fourth Class . . .	Three years' rigorous imprisonment and fine up to Rs. 5,000.	Can try suits up to the value of Rs. 10,000.
Fifth Class . . .	Two years' rigorous imprisonment and fine up to Rs. 2,000 .	Can try suits up to the value of Rs. 5,000.
Sixth Class . . .	Three months' rigorous imprisonment and fine up to Rs. 200.	Can try suits up to the value of Rs. 500.
Seventh Class . . .	Fifteen days' rigorous imprisonment and fine to the extent of Rs. 25 . . . . .	None.

In the Mahi Kantha the Chiefs are classified, but the classification is by no means identical with that of Kathiawar. Thus Chiefs of the third, fourth, and fifth classes in the Mahi Kantha have all of them respectively less extensive powers than the Chiefs of the classes distinguished by the same numbers in Kathiawar. In parts of the Palanpur and Rewa Kantha agencies the Chiefs

<sup>2</sup> No. 106, dated January 8, 1890—Pro., Internal A, February 1891, Nos. 236—246.  
<sup>3</sup> From Bombay, No. 5204, dated August 23, 1894, and telegram No. 463-P., dated October 29, 1894.

<sup>4</sup> Pro., Internal A, September 1894, Nos. 195-196.  
<sup>5</sup> Demi-officials from Chief Secretary, Bombay, dated July 11, and September 5, 1894. K. W. of Pro. just cited.

are not classed and their powers are shown as those of Magistrates of the first, second, or third class. The Chiefs of the Dangs have power only to dispose of petty cases of theft, adultery and assault, and to inflict fines up to Rs. 200 or imprisonment up to two months in default of payment of fine. In the cases of the Pol, Kolhapur and Savanur States, and of Miraj (junior branch) and Ramdurg, these two being at the time under joint administration, it is specially noted that sentences of death require confirmation. The Satara *Jagirdars* have power to dispose of all cases except those of murder and other offences punishable with death or transportation for life which are committed to the Court of the Political Agent. The Southern Mahratta *Jagirdars*, Sangli, Miraj (both branches), Jamkhandi, Kurundwar (both branches) with Ramdurg, are shown in the statement of 1890 as Chiefs of the second class. In 1889 the Bombay Government framed rules to regulate the exercise by the Political Agent of a certain special control in criminal matters over these Chiefships which is vested in the British Government by the terms of the agreements with the Chiefs.<sup>6</sup>

§ 487. The powers of Chiefs of the first and second classes in the Bombay Presidency generally, not only in Kathiawar, were thus defined in orders passed<sup>7</sup> in 1857 :—

*Chiefs of the first class.*—Those who try for capital offences, without permission from the Political Agent, any persons except British subjects.

*Chiefs of the second class.*—Those who try for capital offences, without the express permission of the Political Agent, their own subjects only.

These classes were left unaltered<sup>8</sup> when the classification of the Kathiawar Chiefs made by Major Keatinge was sanctioned by the Bombay and Supreme Governments in 1866. Major Keatinge's scheme of jurisdiction, as slightly modified at the time by the Bombay Government, is identical with that given in the Kathiawar statement above. Major Keatinge noted that in the seventh class there were 106 persons, and he said, "Beyond this there are 206 individuals holding only fractions of villages to whom it seems impossible to allow any jurisdiction." These persons or their representatives are, it is understood, the "non-jurisdictory" Chiefs of Kathiawar, the jurisdiction in their holdings being exercised, as in the case of Kamadhia, by the Thanadars and Political Officers.

§ 488. In 1890 a majority of the Bombay Government proposed the issue of a draft order which, if it had been promulgated, would have done three things: *First*, it would have substituted a system of appeal from the orders of Chiefs in the Bombay Presidency exercising limited jurisdiction for a system of control by means of advice. *Secondly*, it would have either actually defined or paved the way for defining, in the terms of the British Indian Codes of Civil and Criminal Procedure, the political authority of Political Officers in respect to the administration of civil and criminal justice in the States of limited jurisdiction under their charge. And, *thirdly*, it would have declared, in the case of Chiefs exercising full civil and criminal jurisdiction, that "there will ordinarily be no interference with such jurisdiction, whether original or superior;" but that "Government reserves to itself an extraordinary jurisdiction to correct cases of oppression or perversion of the law, and also a visitatorial and inquisitorial power over all the political and native courts to enable it to investigate and rectify cases of gross incompetence, negligence, corruption, and disregard of justice and law." With reference to the first of these proposals, the letter forwarding the draft order said :—"As regards many States, the order does little more than formulate and define existing practice. In the Kathiawar States which have limited jurisdiction, and in four of the Rewa Kantha States, however, the introduction of a system of appeal is an innovation which the Political Agents consider to be undesirable." Lord Reay, the Governor, with whom his successor, Lord Harris, concurred, did not agree with his colleagues. "The difference disclosed," said Lord Reay, "is absolutely fundamental. I do not look upon the Thakur of Limri, the Nawab of Palanpur, etc., as nobles, but as heads of semi-independent States, more like the German princes. We can, for the benefit of

<sup>6</sup> Bombay Resolution No. 155, dated January 7, 1889. K. W. of Pro., Internal A, June 1891, Nos. 119—123.

<sup>7</sup> Foreign Consultations, April 17, 1857, Nos. 22—24. <sup>8</sup> Pro., Political A, June 1866, Nos. 130—132. See also Aitchison, VI, page 184.

their subjects, take away and reduce their powers ; but whatever powers they do exercise should be considered by us as exercised by them in their semi-sovereign capacity. We cannot assimilate a Chief, who exercises judicial functions, to one of our judicial officers."

§ 489. The Government of India replied <sup>9</sup> on June 6, 1891, in these terms :—

"I am to say that the views of the Government of India in this matter are generally in accord with those entertained by Their Excellencies Lords Reay and Harris. The proposal to institute a regular system of appeal to British officers against the decisions of the native tribunals in States whose divided sovereignty does not leave them plenary jurisdiction, is opposed to the principles by which the Government of India are ordinarily guided in their relations with subordinate Ruling Chiefs. Where this procedure is already in force and has not been objected to, it need not be abolished, but the Government of India would prefer not to extend its application.

"I am also to say that it does not appear to the Governor-General in Council either necessary or desirable to classify in the terms of the British Indian Codes the general powers of supervision and control exercised by Political Officers over the proceedings of the courts of Native States. Such supervision should be exercised, when necessary, with the utmost care and upon the personal responsibility of the officer, with a discretion unfettered by technical rules of procedure."

As to the proposed reservation of an extraordinary jurisdiction in the case of Chiefs exercising full civil and criminal powers, the Government of India said :— "This extraordinary jurisdiction is inherent in the Paramount Power, and has been, and will continue to be, exercised when occasion demands ; but such a public and general assertion of it would seem likely to excite alarm and disquietude. Moreover the effect, if any, upon the power and authority of the British Government could only be restrictive. The announcement could not operate to enhance authority which is already complete."

§ 490. Incidentally orders were passed in the same correspondence affecting the powers of Chiefs of the first and second classes. "Under existing orders," wrote the Bombay Government, "the Chiefs of the first and second classes in the Mahi Kantha cannot try British subjects without the permission of the Political Agency, and Chiefs of the second class in Kathiawar and the Rewa Kantha cannot try subjects of other States than their own without similar permission. Since extradition is now freely allowed, the Governor in Council is of opinion that these restrictions may be abolished. In the opinion of this Government, however, a British subject surrendered on the charge of a capital offence committed in a Native State should be tried by the Political Agent, and His Excellency in Council considers that Native State Courts should in no case try a British subject for a capital offence without authority from the Political Agent." The Government of India replied <sup>10</sup> that they had no objection to the removal of the restrictions, and that the safeguards to be applied in the cases of British subjects charged with capital offences were reasonable and proper. It should, however, they said, "be made clear that these proposals do not extend to the trial by the Native Courts of European British subjects, or of European or American foreigners, or of Christians of European descent." Notwithstanding these orders, it is probable that in fact the restrictions have not been removed. For in July 1891 the Bombay Government proposed not to pursue further the idea of formally removing the restriction regarding British subjects, and in this proposal the Government of India acquiesced ; and in September 1894 it appeared that the incapacity to try British subjects without the permission of the Political Agent still obtained in the Idar, Pol and Danta States of the Mahi Kantha.<sup>11</sup>

§ 491. It is worth while to note, both because of the utility of practical

<sup>9</sup> Pro., Internal A, June 1891, Nos. 112-123.

<sup>10</sup> *Ibid.*, Nos. 119-123.

<sup>11</sup> Demi-official from Chief Secretary, Bombay, dated September 6, 1894, K. W. of Pro., Internal A, September 1894, Nos. 195-196. Demi-official from Political Secretary, Bombay, dated April 19, 1895. See also Pro., Deposit I, August 1891, Nos. 1-3.

encouragements to good judicial administration in Native States, and with reference to the Panna, Baoni, and Ajaigarh precedents to be mentioned below, that Chiefs and Chiefships under the political control of the Bombay Government may, for sufficient reasons, be raised from their own rank to a higher one in the prescribed scale of classification. Thus, in 1885, Surajmalji Jorawar Singhji, Desai of Patri,<sup>12</sup> was "promoted" from the fifth to the fourth class among the Chiefships in Kathiawar "in recognition of his high character and judicial ability, the promotion being understood to be personal to the present Chief." And in 1887, on the recommendation of the Bombay Government, the Governor-General in Council was "pleased to direct that the State of Morvi shall take rank amongst the first class States of Kathiawar." This order<sup>13</sup> was notified in the Gazette by the express wish of the Viceroy, Lord Dufferin.

§ 492. In connection with residuary jurisdiction in the Bombay Presidency, Constitution of the Chief Criminal Court, Kathiawar. it only remains to describe the constitution and character of the Chief Criminal Court in Kathiawar as promised in paragraph § 195. It was originally the rule to confirm the sentence passed by a majority of the Court, the President being allowed a casting vote in case of equal division. On various occasions in 1840, 1844, and practically also in 1865, the Government of Bombay, when the assessors declined to concur in adequate sentences, altered the constitution of the Court so as to reduce the assessors to the position of mere advisers and to make the decision rest upon the responsibility of the Political Agent. The original constitution of the Court was on each occasion restored by the orders of the Home Government. In 1842 the Court of Directors ruled that "if the Political Agent should be unable to bring over the assessors to his views, he should communicate his individual opinion to your Government, but what should be publicly declared and recorded is, we think, the sentence of the Court, not the separate opinion of the members. It would still be open to Government to make any alteration in sentence which it deems just and expedient." When the criminal administration of Kathiawar was reorganised in the years 1863 to 1866, inclusive, no ostensible change was made in the character of the Chief Court. But it followed from the establishment of a regular judicial system that the commitment of criminal cases to the Chief Criminal Court, which exercises jurisdiction throughout the whole of Kathiawar, became more constant. Cases are thus committed to the Chief Court by States of less than plenary jurisdiction, as well as by Political Officers. In 1876 the Bombay Government published in the local Gazette a description of the jurisdiction exercised by them in Kathiawar. This notification was thus worded:—

"I.—His Excellency the Governor in Council in the Political Department exercises the power—

- (a) of confirming, reversing, or modifying sentences of the Political Agent's Chief Court of Criminal Justice, when the sentence is death, or imprisonment in excess of seven years;
- (b) of passing judgment, order, or sentence in cases tried by the said Court, wherein a majority of votes of the members of the Court dissents from the opinion of the President;
- (c) of hearing appeals from the finding of the said Court.

"II.—The Political Agent's Chief Court is convened for the trial of cases committed to it by the Magistrates of the province and the State Courts empowered to commit.

"It is composed of the Political Agent or an Assistant Political Agent deputed by him as President, with three or more members selected by the President from among the *Talukdars* and principal officers of the Darbars. The President of the Court not only possesses a casting vote in determining the final order or sentence, but in the event of his being unable to command a majority of the votes, he has the power of suspending the final order or sentence and referring the case for the decision of Government." This notification

<sup>12</sup> *Pro.*, Internal A, July 1885, No. 88.

| <sup>13</sup> *Pro.*, Internal A, March 1887, Nos. 180—183.

had not been rescinded in 1882, and in that year, in connection with the conviction by the Court of one Vrijeshji Vrijinathji, mentioned in paragraph § 524 below, it was held by the Acting Advocate General, Bombay, that the notification did not operate either to extend or limit whatever jurisdiction the Bombay Government then had in Kathiawar. This view was accepted by the Bombay Government, and the Government of India, though not altogether satisfied with it, did not overrule them.<sup>14</sup>

§ 493. In the matter of residuary jurisdiction in the Feudatory Chiefships of the Central Provinces there is something to add to what has already been said in paragraph § 206. The situation is very concisely described in Aitchison<sup>15</sup>:—"Subject to the political control of the Chief Commissioner and his subordinate officers, the Feudatory Chiefs exercise full civil and revenue powers in their States; in criminal cases sentences of capital punishment (and in the case of feudatories from whom an acknowledgment of fealty in form No. CXLV has been taken, sentences of imprisonment exceeding seven years) cannot be carried into effect until confirmed by a British officer. Under the executive orders of the Central Provinces Administration, all sentences of death are submitted, through the Commissioner of the Division, to the Chief Commissioner for confirmation." The eight Chiefs who executed the acknowledgments of fealty were the Chiefs of Bastar, Makrai, Kanker, Khairagarh, Chhuikhadan, Nandgaon, Sakti, and Kawardha.<sup>16</sup>

§ 494. In connection with the exercise of residuary jurisdiction there has been much correspondence regarding the legality of confining prisoners from Native States in British Jails. Section 16 of the Prisoners Act, No. V of 1871, as it stood before the amendments made in 1894, provided that officers in charge of prisons outside the local limits of the original civil jurisdiction of the High Courts of Calcutta, Madras and Bombay "should be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal *acting under the authority* of Her Majesty, or of the Governor-General in Council, or of any Local Government." Section 17 of the same Act made and still makes a warrant under the official signature of an officer of such Court or tribunal sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him. And section 19 enabled the Local Government<sup>17</sup> to authorise the reception, detention or imprisonment of persons sentenced "within the territories of any Native Prince or State *in alliance with Her Majesty*" to imprisonment or transportation for certain offences; provided that the "sentences have been pronounced after trial before a tribunal *in which an officer of Government, duly authorised in that behalf by such Native Prince or State, or by the Governor General in Council, is one of the presiding Judges.*"

§ 495. In 1872 the Government of India dealt with a case from one of the Feudatory States in the Central Provinces, where according to the *sanads* and the acknowledgments of fealty "the Chief's Court is a tribunal which has no power to carry into effect a sentence of death or imprisonment of a certain duration until the case has been referred" to a British officer. And "the Chief, who has the entire control over the tribunal, is bound to obey the instructions and advice given him." The question was whether a man sentenced, on a reference from the Chief of the State, by the Chief Commissioner to imprisonment for life, might legally be confined in a British jail. The Government of India held that the Chief's Court was acting under the authority of Her Majesty or of the Governor-General in Council when it proceeded to pass the sentences which it could not execute without reference to a British officer. "It is also," they said, "reasonably clear that the Chief's Court is under that authority to an extent and in a manner which both satisfies the words of Act V of 1871 and secures the object of the Act, *viz.*, that the sentences shall be reasonable and approve themselves to British ideas of justice." It was therefore ruled that the case fell within section 16 of the Act, and that the prisoner

<sup>14</sup> Pro. A, Judicial I, September 1883, Nos. 4-36. The particulars as to the constitution and jurisdiction of the Court are taken from Bombay Government letter No. 1229, dated March 11, 1882, No. 28 in those Proceedings.

<sup>15</sup> Aitchison, VIII, page 602.

<sup>16</sup> *Ibid.*, page 647.

<sup>17</sup> The history of these provisions is fully recounted in a note by Mr. Harvey James, dated July 10, 1890, but it is not necessary to recapitulate it here—see K. W. of Pro., Internal A, August 1890, Nos. 185-187.

might be confined in a British jail.<sup>18</sup> An opinion which had practically the same effect as this ruling was given by Sir Andrew Scoble<sup>19</sup> in 1890. He said—“Where a sentence does not become complete until it is confirmed by the British officer, the Court which, after such confirmation, gives effect to the sentence seems to me to be acting under the authority required by the section” (*i.e.*, section 16); “and I see no ground for limiting the word ‘acting’ to proceedings at the trial.”

Accordingly, prisoners sentenced by the Chiefs of the eight States of the Central Provinces whose powers are limited to the infliction of seven years’ imprisonment, might, if the sentences were confirmed by the Commissioner of the Division, be confined in British jails. This was approved by the Government of India in 1890 and 1892; and this is still the case under the present law. As regards the remaining seven Feudatory States in the Central Provinces, whose powers are not similarly restricted, it was held in the same correspondence that a sentence of imprisonment passed by a Court of any of these States, not being at the time under British management, is not a sentence of a tribunal within the meaning of section 16 of Act V of 1871. In this respect, however, the law has been altered. The four States of Kalahandi, Patna, Sarangarh, and Raigarh were at the time under British management, and the Government of India decided that so long as this temporary arrangement should subsist the officers appointed by the Chief Commissioner to exercise jurisdiction within them would constitute Courts within the scope of section 16, and that consequently all persons sentenced to imprisonment by these officers might be legally confined in British jails. The character of the jurisdiction exercised by these officers has been explained in paragraph § 456 above, and of course it was not residuary jurisdiction. The Government of India also pointed out that there is no legal objection to the execution in the Andamans of a sentence of transportation passed by a Court of a Feudatory State if a sentence of imprisonment passed by that Court could legally be carried out in a British jail.<sup>20</sup> At the same time several other connected points were settled which we need not detail.

§ 496. In the letter of 1872 quoted in the last preceding paragraph the Government of India said in reference to the Prisoners Act, and entirely in accordance with the history of that enactment—“The expressions used in sections 16 and 19 seem designed to comprehend all cases in which sentence has been passed under the substantial control of British tribunals.” The rulings of 1890 and 1892 appeared to supersede a ruling of 1889 so far as concerns State Courts whose sentences require confirmation and the Courts of British officers temporarily exercising State jurisdiction. In 1889 the Government of India said—“The Governor-General in Council cannot, under the existing law, legally authorise the detention in any prison in British India of prisoners convicted and sentenced by the Courts of Native States, unless they have been tried by a tribunal in which an officer of Government, duly authorised in that behalf by the Native State or by the Governor-General in Council, was one of the presiding Judges.” But in this decision<sup>1</sup> both the ruling of 1872 and the provisions of section 16 of the Act were clearly overlooked. The doubts, however, which might arise on a consideration of the whole of the correspondence just abstracted have been set at rest by the legislation of 1894. Act VII of that year repeals the words shown in italics in paragraph § 494, and authorises the execution in British territory of sentences of imprisonment passed “by any Court or tribunal acting, whether within or without British India, under the general or special authority of Her Majesty or of the Governor-General in Council or of any Local Government, or, with the previous sanction of the Governor-General in Council in each case,” of “any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal of any Native Prince or State under the suzerainty of Her Majesty.” The revised section 16 following the decision of 1872 and the opinion of Sir Andrew Scoble

<sup>18</sup> Pro., Judicial A, October 1872, Nos. 14-16.

<sup>19</sup> K.-W. of Pro., Internal A, August 1890, Nos. 185-187.

<sup>20</sup> Pro., Judicial A, October 1872, Nos. 14-16.

Pro., Internal A, August 1890, Nos. 185-187.

Pro., Internal A, February 1892, Nos. 35-38.

Pro., Internal A, July 1892, No. 118.

Pro., Deposit I., August 1892, No. 24.

<sup>1</sup> Pro., Internal A, June 1889, Nos. 219-230; see also Pro., Internal A, February 1889, Nos. 236-240, a Bombay case which it is unnecessary to abstract.

mentioned in paragraph § 495, further deals with sentences confirmed in the exercise of residuary jurisdiction. It enacts that where a Court or tribunal of a Native Prince or State under the suzerainty of Her Majesty "has passed a sentence which cannot be executed without the concurrence of an officer of the British Government, and such sentence has been judicially considered on the merits, and confirmed by any such officer specially authorised by name or by office in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order, or warrant of a Court or tribunal acting under the authority of the Governor-General in Council." In section 19 as now amended the words "under the suzerainty of Her Majesty" take the place of the words "in alliance with Her Majesty;" and the section has been so recast that the powers thereby conferred to direct imprisonment in British territory may be exercised either by the Governor-General in Council or by the Local Government when the sentences "have been pronounced after trial before a tribunal, of which the presiding Judge, or, if the Court consisted of more than one Judge, at least one of such Judges, was an officer authorised to act as such Judge by the Native Prince or State or by the Governor-General in Council." Thus effect has now been fully given to the interpretation placed on the Act in 1872.

§ 497. Residuary jurisdiction is exercised whenever a death sentence passed by a State Court is confirmed by a British officer. In this connection a decision of 1889, which appears to be authoritative, may be noted here. In two cases the Chief Commissioner of the Central Provinces, when dealing with sentences of imprisonment referred to him from feudatory States, enhanced the punishment to a sentence of death. Both cases were cases of the murder of boys for the sake of their ornaments. One of the cases, that of Kokia Kosai, was from the State of Nandgaon, at the time under British management. The Viceroy, Lord

Sentences of imprisonment when referred to a Political authority for confirmation should not be enhanced to sentences of death.

Lansdowne, after consulting Sir A. Scoble, the Law Member, decided that the sentence of death should be remitted and the original sentence, imprisonment for life, restored.<sup>2</sup> In the other case Anant Khandra and Jhanker Ganda were convicted by the Dewan of Sonpur, sitting with assessors. Anant, who confessed, was sentenced to death, and the sentence was approved by the Raja and confirmed by the Chief Commissioner. Jhanker did not confess and was sentenced to imprisonment for twenty years. The State of Sonpur was not under British management, and its Chief was not one of the eight Chiefs in the Central Provinces who executed acknowledgments of fealty. The *sanad*<sup>3</sup> obliges the Chief to submit capital sentences for confirmation, but does not otherwise restrict his judicial powers. It requires him, however, to accept and follow such advice and instructions as may be duly communicated to him. The Chief Commissioner defended his proceedings at length, relying on the *sanad* and urging that we control such feudatories as Sonpur in patriarchal fashion, and that some strong measure was necessary to stop the murder of children for the sake of their ornaments, which was a common offence.

The Government of India observed<sup>4</sup> that it was desirable that the Chief Commissioner in considering the legal aspect of such cases as that of Jhanker should consult the Judicial Commissioner. The object of the requirement in the *sanad* that capital sentences should be submitted for confirmation appeared to them to be "not to enable the Commissioner to guard against the danger of inadequate sentences, but to furnish him with the means of preventing unjust or excessive sentences from being carried out." Though the Chief Commissioner was "undoubtedly empowered to give advice which the Chief is bound to accept," yet the Government of India thought "that advice should not take the form of intervention in any special case in order to change a sentence of imprisonment into one of death. The more suitable course in such a case would have been to point out, as a matter of prudent administration, the necessity which exists for suppressing such crimes as Jhanker's by adequate sentences." The sentence of death passed on Jhanker by the Chief Commissioner was cancelled and the original sentence restored.

<sup>2</sup> Pro., Internal A, February 1889, Nos. 227-283.  
<sup>3</sup> Aitchison, VIII, pp. 548-49, *Sanad* No. CXLVI.

<sup>4</sup> Pro., Internal A, June 1889, Nos. 219-230.



§ 498. The nature of the residuary jurisdiction exercised by the British Government in the Orissa and Chota Nagpur Tributary Mahals will sufficiently appear from what we have already said in paragraphs § 211, § 224 and § 230. As regards the Orissa Mahals we may add here that the Bengal Government has been authorised to entrust the Chiefs with more extensive powers<sup>5</sup> than those ordinarily allowed to them; and any Chief so privileged will be entitled to exercise his further powers in the manner, to the extent, and subject to the conditions, if any, which the Lieutenant-Governor of Bengal may prescribe. The notification,<sup>6</sup> which defines the powers of the Superintendent of the Mahals and his Assistants in the exercise of the residuary jurisdiction, excludes proceedings against European British subjects and persons jointly charged with European British subjects. The Bill mentioned in paragraph § 224 has been passed into law as Act No. XI of 1893. This Act repeals Act XX of 1850 and the old Bengal Regulations affecting these Mahals,<sup>7</sup> and grants indemnity for past proceedings as proposed in the Bill. It further authorises the execution in British India of sentences of imprisonment or transportation passed by any Court or tribunal acting under the authority of the British Government in, or in respect of, any Tributary Mahal in Orissa; and of sentences of imprisonment passed in certain cases by the Chiefs themselves in their Courts.

Of residuary jurisdiction in the Chota Nagpur Mahals, we need only say that fresh *sanads* are about to be granted to the Chiefs, and that the Bengal Government has proposed that they shall be framed on the model of the new Orissa *sanads*.<sup>8</sup>

§ 499. There is so much to say regarding residuary jurisdiction in Central India, that before turning to that subject

**Summary.**

we had better sum up results for other parts of India where residuary jurisdiction is a conspicuous part of the political system; that is, for the Bombay Presidency, the Central Provinces, and the Tributary States of Orissa and Chota Nagpur. It will be observed that throughout nearly the whole of the centre of India, from the west to the east coast, where petty States are either massed together or dotted about like distinct islets amid a surrounding sea of British territory, this matter of residuary jurisdiction has great and natural importance, due to historical causes, which it would be out of place to discuss here. No doubt, residuary jurisdiction is exercised wherever a sentence, as, for instance, a death sentence, passed by a Ruling Chief or by a Court held under his authority exclusively, must be referred for confirmation to a British authority before it can be carried out. Death sentences, for instance, passed by the Chiefs of Kapurthala and Faridkot in the Punjab require such confirmation; and other similar instances could be adduced. But it is not necessary to attempt to exhaust the subject. We hope that the nature of residuary jurisdiction, and the general policy and practice of the Government of India in its exercise, will sufficiently appear from a consideration of those cases which we have taken from the territories where that jurisdiction is most conspicuous.

(1) *In the Bombay Presidency many Chiefs are classified according to the judicial powers which they are entitled to exercise, and the judicial powers of many Chiefs who are not classified are likewise variously restricted.*

(2) *Where a Chief exercises limited judicial powers, the residuary jurisdiction vests in the British Government.*

(3) *If, as in certain cases in the Bombay Presidency, a Chief possesses no judicial powers, the whole jurisdiction in judicial matters similarly vests in the Paramount Power.*

(4) *It is not expedient to institute a regular system of appeal to British officers against the decisions passed by Ruling Chiefs in the exercise of limited judicial powers.*

(5) *The powers of control exercised by Political Officers over the Courts of States with limited jurisdiction should remain discretionary and should not*

<sup>5</sup> Government of India to Bengal, No. 1465, dated May 1894.

<sup>6</sup> No. 3121, dated September 5, 1892.

<sup>7</sup> As to these enactments see paragraph § 205.

<sup>8</sup> Bengal Government No. 11 P. T., dated November 15, 1891.

be defined in terms of the British Indian Codes. This control is distinct from the exercise of residuary jurisdiction in cases beyond the limited powers of the States.

(6) *It is unnecessary and inexpedient to declare that the British Government has an extraordinary jurisdiction to correct the miscarriage of justice in States with plenary powers. A declaration of this kind could not enhance, and, so far as it had any effect, would merely restrict an authority which is already complete.*

(7) *As a consequence of improved judicial administration or of personal qualifications, or on similar cogent grounds, the judicial powers of a Chief, as a personal concession, or of a Chiefship, as such, may be enhanced by the Government of India or by the Local Government if duly authorised in this behalf.*

(8) *In the Feudatory States of the Central Provinces, death sentences in all cases, and in the case of eight Chiefships, sentences of imprisonment exceeding seven years, require confirmation by a British officer.*

(9) *Sentences of imprisonment confirmed by British officers, or passed by them when duly authorised to exercise jurisdiction in, or in respect of a Native State, or by a mixed court in which a British officer duly qualified according to law is one of the presiding Judges, may with a few unimportant exceptions, be executed in British jails outside certain limits in the Presidency towns.*

(10) *In the absence of express legislation, or of the previous sanction of the Governor-General in Council passed according to law, sentences of imprisonment, which do not require confirmation by a British officer and which have been passed by Courts of States not under British management, may not be executed in British jails.*

(11) *A sentence of transportation passed by a State Court may be executed in the Andamans, if a sentence of imprisonment passed by that Court could legally be carried out in a British jail.*

(12) *The judicial powers of Chiefs in the Orissa and Chota Nagpur Tributary States have been, or are about to be, regulated by sanad. The execution in British India of certain sentences of imprisonment or transportation passed in cases arising in the Orissa States is expressly sanctioned by a special Act.*

(13) *Sentences of imprisonment referred to Political authorities for confirmation should not be enhanced to sentences of death.*

§ 500. In paragraph § 315 we have briefly explained in general language the Central India system of guarantee by which the minor Chiefs subordinate to the guaranteed Thakurs of Central India. their possessions, the measure forming part of the general pacification of the country. It will be remembered that the necessity of mediation was primarily due to Mahratta conquest, to the ejection of Rajput Thakurs by the Mahrattas, and to the predatory habits of dispossessed chieftains and leaders of robber bands who found refuge in jungles and fastnesses and sought vengeance and subsistence by plunder and black-mail. In the case of the Thakur of Sutalia, 1871, the Government of India wrote—"One of the main objects of the British policy was to prevent further encroachments on the rights of the Rajputs by declaring the permanency of the rights existing at the time of the British occupation of Malwa, and by adjusting and recording the relations of the Rajput Thakurs to the Mahratta powers. It will accordingly be found that the majority of the engagements mediated by the British Government were engagements between the families of Sindhia, Holkar, and the Puar of Dhar and Dewas on the one hand, and the Rajput Thakurs on the other. But British interference was not confined to these cases. It was exercised wherever it appeared to be called for by the circumstances of the country. Accordingly the British Government mediated and guaranteed the relations, not only between the Mahrattas and the petty Chiefs under them, but between the Muhammadan States of Bhopal and Jaora and the Rajput Thakurs, between Mahrattas and Mahrattas, and between Rajputs and Rajputs, in many cases that

might be mentioned." There was no distinction between mediation and guarantee. "The degree of interference," says Aitchison,<sup>9</sup> "exercised by the British Government in the affairs of the guaranteed Chiefs varies with the nature of the engagements concluded, which were very numerous and diverse in character, some being in the form of engagements between the superior States and the subordinates guaranteed by the British Government, others being *sanads* or deeds issued by the representative of the British Government either alone or conjointly with the Ruler of the superior State, and others being mere orders or *parwanas* issued by the superior Chief to which the representative of the British Government attached his signature as guarantee." In comparatively few of the engagements is the word guarantee mentioned. The mere fact of the mediation was proof of the guarantee, and this was generally understood both by the people and by the British officers.<sup>10</sup>

§ 501. In April 1889 Mr. Henvey, the Agent to the Governor-General, submitted a note on jurisdiction in the estates of the guaranteed Thakurs in Central India. "Though the administrative arrangements," said Mr. Henvey,

Note of 1889 by Mr. Henvey.

"of some of the larger States, including Gwalior, may for the present be on a better footing, the predatory instincts, rapacious tendencies, and aggressive methods of the Mahrattas remain the same; and it is none the less necessary now to defend the petty Chieftains against their encroachments than it was when Malcolm settled Malwa." Mr. Henvey put out of consideration Chiefs holding on guaranteed *sanads* which exclude the jurisdiction of the superior Darbar, and Chiefs holding directly of the British Government. If the jurisdiction of the superior Darbar was excluded by formal documents, no question ought to arise. Chiefships held direct of the British Government were not "guaranteed" in the sense in which that term is used in Central India, for it there implies "a settlement mediated between superior and inferior by the British Government." With regard to all the rest, he wrote—"The theory generally is that the superior Darbar has no jurisdiction. The guaranteed Chief, whether he be a powerful prince or a small Bhumia, is supposed to settle his own petty cases, civil and criminal, but the Political Agent has jurisdiction when the criminal cases are of importance and when the civil cases relate to matters in which the personal interests of the Chief himself or the interests of persons other than his subjects are involved. In practice, however, the interference of the superior Darbar will be found to vary according to the opportunities for encroachment which the superior Darbar has enjoyed; and in like manner the control of the Political Agent varies from close supervision to the mere hearing and disposal of such cases as are specially brought to his notice." Mr. Henvey's conclusion was that "*each case of disputed jurisdiction must be taken up as it arises and decided on the merits according to varying considerations, such as the traditional character and policy of the superior Darbar, especially towards the Chief concerned, the history and position of the subordinate Chief, the nature of the holding and the practice hitherto followed.*" In developing this case-law certain guiding principles, he thought, should be recognised. These were —

"*First.*—Where the relations of the superior Darbar with its subordinate Chiefs have been generally good, as in the instance of Dhar, and the Darbar has in practice exercised jurisdiction, there is probably no need for jealous interference so long as the jurisdiction is fairly and reasonably exercised.

"*Second.*—With regard to other Darbars, such as Holkar and Sindhia, prescription is the safest rule. No encroachments by the superior Darbars upon prevailing practice should be allowed except for the strongest reasons, and even in weighing claims based upon prescription a distinction must be drawn between classes of Chiefs. Scarcely any length of prescription would justify a departure by the superior Darbar from the express terms of a *sanad*. On the other hand, if the subordinate be a mere *Tankhadar*, that is to say, a mere recipient of cash or an assignee of the revenues of villages, the *onus probandi* would lie upon him to show that owing to special circumstances he had from time immemorial

<sup>9</sup> Aitchison, IV, p. 5.

enjoyed an immunity from judicial interference." But *Tankhadars* in the enjoyment, over and above cash payments, of villages guaranteed by *sanads* not excluding the jurisdiction of the superior Darbar, or of some villages so held, and of others to which the guarantee does not extend, would be dealt with on the basis of their village holdings.

Chiefs, other than *Tankhadars*, holding some villages on *sanads*, not excluding the jurisdiction of the superior Darbar and other villages without guarantee, would require very careful treatment. "The test would be whether the concession of jurisdiction to the Darbar in part of the estate would or would not destroy the Thakur's privileges in the other part. Very long prescription enjoyed without dispute and without practical injury to our dependents or our policy might decide the question."

In the case of Chiefs, other than *Tankhadars*, holding simply on guaranteed *sanads*, which do not exclude the jurisdiction of the superior Darbar, "nothing short of long, continuous, and undisputed prescription should avail to establish the claims of the Darbar."

"Lastly," said Mr. Henvey, "whenever and wherever the jurisdiction of the superior Darbar is conceded, or recognised as existing, within guaranteed estates of any kind, this should be done on the clear understanding that the Government of India reserves to itself the right of intervening, if necessary, to guard the guaranteed holder against any proceedings which may disturb the guarantee or otherwise injuriously affect the holder."

This note was received with a letter dated April 22, 1889, and the principles enunciated in it were demi-officially approved on October 30, 1889, with the remarks that the Agent to the Governor-General should bear in mind "the importance of not encouraging anything that bears the semblance of encroaching upon the legitimate rights of the superior Darbars," and that our position would be "all the stronger if we show that we are thoroughly impartial in the whole matter."

§ 502. The leading case on the present subject is that of the Thakur of Agra-Barkheda, who held certain villages and rights on *sanads* granted by Sindhia at the instance of the Political Agent, Gwalior, and certain other villages without *sanads*. The case was reported by Mr. Henvey on February 24, 1890. He explained that the main position which he assumed in his note abstracted above, was "that in dealing with disputes between superior Darbars and guaranteed holders the essential point is to keep the privileged rights intact, and for that end to place accidental or unguaranteed rights as nearly as possible upon the same footing with guaranteed rights, subject to such varieties only as might be found to be sanctioned by prescription, sufferance, and usage." He also held—

The Agra-Barkheda case, 1890.

I.—"That when the holding is mixed, the guarantee should be strictly construed, and, if necessary, enforced, and that for the unguaranteed part of an estate the Thakur is entitled at least to the good offices of the Political Agent, without whose knowledge and permission the superior Darbars should not be allowed to encroach upon the unguaranteed estate, including amongst encroachments:— (1) increase of quit-rent; (2) imposition of new and unauthorised cesses; (3) judicial interference not sanctioned by long and undisputed usage; (4) punitive proceedings against the Thakur himself." And—

II.—"That whereas guaranteed Thakurs in Central India are under the express and immediate protection of the British Government, all Thakurs may, according to the circumstances of each case, invoke our kindly influence and good offices; and those Thakurs, who are partly guaranteed and partly unguaranteed, have in virtue of the guaranteed part, a special claim in case of need to our protection over the whole."

Mr. Henvey then applied his principles to the case of the Thakur of Agra-Barkheda, setting aside a waiver of the guarantee made by the Thakur and approved by the Government of India in 1875, under a misapprehension of the facts. "The holder," Mr. Henvey said, "of guaranteed privileges cannot be

held free to contract himself out of those privileges without the specific consent of the guarantor." He proposed that the Thákur should be retained under our protection, as above described and defined, though he could not be expressly guaranteed for any other rights and tenures than those set forth in his *sanads*. Arrangements were also suggested for the determination of the number of villages which the Thakur was entitled to hold and for the adjustment of boundaries and accounts between him and the Gwalior Darbar.

The Government of India replied that they were prepared to accept the general principles which Mr. Henvey wished to lay down for the guidance of Political Officers in dealing with disputes between the superior Darbars of Central India and their feudatories; and they approved his proposed application of those general principles to the particular case of the Thákur of Agra-Barkhera. The practical relinquishment by the Thákur of his guarantee in 1875 was not properly brought to the notice of the Government of India at the time, and they could not acquiesce in it.

There is no doubt that these official orders communicated on June 16, 1890, were intended to approve the principles set forth by Mr. Henvey both in his note of 1889 and in the Agra-Barkheda case. This point has been expressly ruled in the case of the Thákur of Bhatkheri, of which the facts need not be stated.<sup>11</sup>

The note of 1889, and the Agra-Barkheda case taken together illustrate the extensive residuary jurisdiction held by the British Government in the estates of guaranteed Thákurs in Central India, and the principle that on grounds of prescription, in the absence of countervailing political considerations, parts of that residuary jurisdiction may, if necessary, be conceded to superior Darbars, without, however, abrogating general rights of protection. Mr. Henvey, for instance, excluded from his proposals the case of certain guaranteed estates in Dhar in respect to which the Government has for special and exceptional reasons conceded to the Maharaja the privilege of exercising jurisdiction.<sup>12</sup>

§ 503. The correspondence just abstracted relates to the question of the exercise of residuary jurisdiction in the case of the mediatised Chiefs of Central India by one or other of two authorities, the British Government or the superior Darbars. But the powers of the mediatised Chiefs generally were defined in

The powers of mediatised Chiefs defined in 1862. 1862 in such a way as to leave large residuary jurisdiction in the hands of the British Government, the question as between the Government and the Darbars coming up for settlement, as we have seen, many years afterwards. Noting on March 10, 1864, Mr. Aitchison wrote<sup>13</sup>—"In April 1862, Major Meade referred for orders a case in which the Chief of Rajgarh, one of the guaranteed Chiefs in Central India and a tributary of Sindhia, had sentenced one of his subjects to twenty years' transportation for murder. The sentence had been forwarded to him for confirmation, but he could find no orders authorising him to act. He presumed that independent rulers like Sindhia, Holkar, and the Begam of Bhopal, could dispose of such matters themselves, except when the trial was presided over by a British officer. But Major Meade wished for definite orders for his guidance as regards both the mediatised Chiefs in Central India and the Chiefs in Bundelkhand. The question as regards the mediatised Chiefs was disposed of in the orders of April 23, 1862, in which it was declared that these Chiefs have not the powers of life and death, but must refer all serious cases, whether inter-jurisdictional or not, to the Political Agent." This<sup>14</sup> appears to be the origin of the 10th rule in Aitchison relating to the mediatised Chiefs which, as we noted in paragraph § 315, is not covered by the orders of 1864.

<sup>11</sup> See Government of India letter to the Agent to the Governor-General in Central India, No. 3824-1, dated October 28, 1894.

<sup>12</sup> The whole discussion originated in a question between the guaranteed State of Bakhtgarh and the Dhar Darbar. It has been thought sufficient, however, to give merely the results in the text. See for further particulars, Pro., A Political I, March 1883, Nos. 144-146, February 1884, Nos. 61-64, and Pro., Internal A, April 1883, Nos. 52-55.

<sup>13</sup> Pro., Political A, May 1864, No. 54.

<sup>14</sup> See also Pro., Judicial A, April 1862, Nos. 55-56, and January 1863, Nos. 5-6. It appears that the actual ruling to which Sir Charles Aitchison referred is Foreign Department Resolution No. 173, dated April 23, 1862, which explained the practice as regards powers of Chiefs in Malwa, declined to alter it, and declared that "the Chiefs, who have not the power of life and death, refer all serious cases, whether inter-jurisdictional or not, to the Political Agent."

§ 504. In that year the case of the Bundelkhand Chiefs was very fully considered. On the political history of the Bundelkhand Chiefs, 1864. that part of the country enough has already been said in paragraph § 239. The case of Rewa in Baghelkhand was considered with that of the Bundelkhand Chiefships; and it was decided<sup>15</sup> that Rewa, Orchha, Datia and Samthar, all Treaty States, need not refer capital sentences for confirmation. As regards the Chiefs holding under *sanads*, it was directed, as already said in the paragraph just quoted, that they must refer all heinous cases involving sentences of death, or transportation or imprisonment for life, to the local officers of the British Government. In confirming these orders the Secretary of State, Sir Charles Wood, added—"Her Majesty's Government desire that the officers under whose supervision and control these petty States are placed, should be reminded that the policy to be observed towards these Chiefs should be one of indulgence and forbearance, and all unnecessary interference with their rights and privileges and independent action should be carefully avoided."

§ 505. In 1867 the Chiefs of Panna, Bijawar, and Ajaigarh appealed against the orders of 1864, and Sir Richard Meade, the Agent to the Governor-General, suggested that some distinction should be made in favour of the more important *sanad* Chiefships. The Government of India could not allow that the orders of 1864 in any way contravened the previous assurances given by Government to these Chiefs. But they said<sup>16</sup> the same considerations "which led to the restrictions then imposed may now be held to justify their relaxation in the case of any Chief who, by personal qualifications and enlightened policy, proves that the administration of justice may, in respect even of the most heinous classes of crime, be entrusted to him." On the recommendation of Sir Richard Meade *sanads* were accordingly granted to the Chiefs of Panna, Baoni, and Bijawar, which empowered them to decide all criminal cases on the conditions that their death sentences should be subject to confirmation, and that periodical reports of all cases in which sentences of transportation or imprisonment for life were passed, should be submitted to the local Political Officers. It was further declared that the authority thus conferred would be at any time suspended or revoked, should circumstances so require; and that the full powers bestowed would continue only so long as the Chief merited the distinction and would not necessarily be transmitted to his successor.

§ 506. In 1886 it appeared that the Chiefs of Panna and Baoni, who had succeeded to their States since the grant of *sanads* as above, claimed full jurisdiction as of right: and that the Chief of Ajaigarh, to whom no *sanad* had been granted, had been allowed to try all heinous cases. The Maharaja of Ajaigarh was a minor when the *sanads* were issued in 1867, and though he was included in the proposals of that time, the question of formally investing him was overlooked when he came of age. It seemed desirable to mark the facts that the privilege of supreme jurisdiction was personal and depended on the grant of the Paramount Power; and the opportunity was also taken to pronounce a definite ruling as to the powers of the petty Chiefs and *Jagirdars* in Bundelkhand. The Maharaja of Bijawar was reported to be quite unfit for the exercise of extensive judicial authority, and the concession made to him by the *sanad* of 1867 was withdrawn. *Sanads* similar to those of 1867 were granted to the Panna, Baoni, and Ajaigarh Chiefs. As regards the petty Chiefships and *jagirs* the decision<sup>17</sup> was "to recognise the existing practice under which the Political Agent, subject to the general rule that all heinous offences, such as murder, culpable homicide, robbery, mischief by fire and rape, must be tried by him, exercises his discretion as to whether it is necessary to interfere in other cases or not."

§ 507. The date of these orders was May 28, 1887. In October of the same year Colonel Bannerman, Officiating Agent to the Governor-General for Central India, reported that in Western Malwa it had been the practice for many years for

<sup>15</sup> Pro., Political A, May 1864, Nos. 52-55.

<sup>16</sup> Pro., Political A, April 1867, Nos. 38-40.

<sup>17</sup> Pro., Internal A, August 1886, Nos. 228-231.

Pro., Internal A, June 1887, Nos. 167-172. For other precedents for enhancing the criminal judicial powers of

Ruling Chiefs see the following cases: Charkhari, Pro., Internal A, March 1894, Nos. 220-222, and June 1894, Nos. 196-199. Chhatrapur, Pro., Internal A, January 1894, Nos. 100-102. Kolhapur, Pro., Internal A, May 1895, Nos. 19-20.

the Political Agent to interfere in inter-jurisdictional cases; that is in cases, civil and criminal, in which the parties concerned are not subjects of the same State. "It is laid down," said Colonel Bannerman, "in an extract from a Foreign Department Resolution marked No. 173, dated 23rd April 1862, that even in the case of substantive States, such as Sindhia and Holkar, the Political Agent adjudicates, as representative of the Paramount Power, cases in which the offenders are of one State and the plaintiffs of another. In 1862 the Governor-General in Council was opposed to any alteration of the practice which has obtained in Malwa since 1818." Colonel Bannerman pointed out that the great States of Indore and Gwalior now had more or less organised systems of justice, and he saw no reason why inter-jurisdictional cases should not be dealt with in Western Malwa as they were dealt with elsewhere in Central India; to this end he proposed that in civil cases the Political Agent should have no judicial jurisdiction and should merely act as a Political Officer to prevent palpable miscarriage of justice. In criminal cases Colonel Bannerman thought the Political Agent should not, as a rule, "interfere where any of the larger States are concerned on both sides, or where the case would be tried ordinarily in the courts of such State. Crime should be considered local, and an offender of whatever nationality should be tried in the State where his offence is committed." The Government of India after consulting Sir Lepel Griffin, who agreed with Colonel Bannerman, replied<sup>18</sup> that they tentatively accepted the opinion expressed by Colonel Bannerman that there was now less necessity for interference in inter-jurisdictional cases than there was in 1862, when the Governor-General in Council resolved to maintain the existing practice. "Steps," they said, "may accordingly be taken to gradually introduce such relaxations in the practice as may appear to you safe and advisable with a due regard to the character of the administration of the States concerned."

§ 507A. Not long afterwards a question arose whether the Jagirdar of

Principles laid down in 1890 to guide the discretion of the Political Agent, Bundelkhand.

Alipura, one of the petty Chiefs of Bundelkhand, might dispose of a case of highway robbery without reference to the Political Agent.

Mr. Henvey, the Agent to the Governor-General, bearing in mind the general policy inculcated by Sir Charles Wood's despatch of 1864 (quoted in paragraph § 504 above) instructed the Political Agent that if he were satisfied as to the Jagirdar's capacity to inquire into a heinous charge of the kind, he might confine his proceedings to confirming, annulling, or revising the decision of the Jagirdar when reported to him. Mr. Henvey construed "the rulings of Government as requiring trial by the Political Agent in the sense that the final order rests with him, and not in the sense that he is bound to conduct all the proceedings of every important trial in his own Court. But the extent of the Political Agent's interference is discretionary with him and must be measured by his knowledge and experience of the Chief's character and of the judicial machinery of the State."

Mr. Henvey was informed that he had thus correctly interpreted the wishes and policy of the Government.<sup>19</sup>

In February 1891 it was decided<sup>20</sup> that the *sanads* granted in 1887 to the Chiefs of Ajaigarh, Baoni, and Panna do not apply to any criminal case in which the person accused, or any one of the persons accused, is a European British subject or of European or American nationality.

§ 508. The correspondence of 1860-81, from which we have quoted in paragraph § 457 passages relating to the position of Superintendents, resulted in the

Powers of Central India officers in the exercise of residuary jurisdiction defined in 1883 to 1891.

clear definition of the powers to be entrusted to various classes of officers in

Central India in the exercise of residuary jurisdiction. This was effected by several notifications<sup>1</sup> of 1883, of which one was cancelled and reproduced in a slightly amended form in 1891. As usual the notifications were issued by the Governor-General in Council in exercise of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, and of all other powers enabling him for the purpose. The most important provisions, which were not altered by the amendment of 1891, were—*first*, "that every Political Agent for the time being accredited to a Native

<sup>18</sup> Pro., Internal A, January 1888, Nos. 147-150.

<sup>19</sup> Pro., Internal A, May 1890, Nos. 61-64.

<sup>20</sup> Pro., Secret I., March 1891, Nos. 1-4 (case of Jules Pons and an American).

<sup>1</sup> Notifications Nos. 1708 to 1770-I., dated June 27, 1883, and No. 5023-I., dated December 24, 1891—*Mcpherson's Lists, Central India*, pages 42-43.

State in the Central India Agency shall exercise<sup>2</sup> within the limits of that State (*in all cases in which such powers may lawfully be exercised by the Governor-General in Council within such States*), the powers of a District Magistrate and a Court of Session as described in the Code of Criminal Procedure;” and, *secondly*, that none of the notifications applied to proceedings against European British subjects or persons jointly charged with European British subjects. This was necessary as the residuary jurisdiction of the British Government and its jurisdiction over European British subjects rest on entirely different foundations. We may further remark here that when the Government of India thus regularised the exercise of residuary jurisdiction in Central India in terms of the Code of Criminal Procedure, they did nothing inconsistent with their later decision quoted in paragraphs § 488 and § 489 above rejecting certain proposals of a majority of the Bombay Government. What was here placed on a systematic basis was jurisdiction over Native Indian subjects of Her Majesty, and the jurisdiction which must in any event be exercised by Political Officers in cases beyond the competence of Chiefs with limited powers. But the Bombay proposals of 1890 went far beyond this and aimed at regulating by the judicial methods of the Codes the intervention of Political Agents in those cases which did not come to them in the exercise of their residuary jurisdiction, but were actually within the limited powers of the Chiefs under their charge. This would have been a complete confusion of political with judicial authority.

§ 509. Drawing into a focus the light thrown on residuary jurisdiction in Central India by the proceedings abstracted above, we find the conclusions about

**Summary.**

February 1891 expressly excludes the jurisdiction of the four Treaty States over persons of European or American nationality (*vide* paragraph § 507A); but if their jurisdiction is not so limited by that decision, it may be presumed to be so limited by the general practice in India; hence the terms of head (8) in this summary:—

(1) *It is the general rule<sup>3</sup> in Central India that a mediatised Chief has not the power of life and death, and in criminal cases within his jurisdiction 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.*

(2) *But the superior Darbar may sometimes claim certain jurisdiction over a mediatised Chiefship. A question of this kind must be decided on its merits according to varying considerations, such as the traditional character of the superior Darbar towards the Chief concerned, the history and position of the subordinate Chief, the nature of the holding, and the practice hitherto followed. Detailed rules have been laid down to guide the application of this principle.*

(3) *A guaranteed Chief cannot waive his privileges without the assent of the Paramount Power.*

(4) *If the jurisdiction of the Darbar be allowed, the Government of India still have the right of interposing, if necessary, to guard the guaranteed Chief against any proceedings which may disturb the guarantee or otherwise injuriously affect him.*

(5) *In civil cases, on the assumption that the superior Darbar has no jurisdiction, the Political Agent usually has jurisdiction if the case relates to a matter involving the personal interests of the mediatised Chief himself or the interests of persons other than those under the authority of the Chief.*

(6) *In Bundelkhand and Baghelkhand the four Treaty Chiefs of Rewa, Orchha, Datia, and Samthar have full criminal jurisdiction, and can pass capital sentences without confirmation by any British authority.*

(7) *Full criminal jurisdiction, subject, however, to the confirmation of death sentences and to the submission of certain reports, has been conferred by sanad on certain Chiefs in Bundelkhand as a personal concession which may be revoked, if necessary, and is not inheritable by their successors.*

<sup>2</sup> A similar Notification, No. 1915-1, dated May 28, 1884, has been issued for Rajputana; except that for the words “shall exercise” the words “may, in his discretion, exercise” have been substituted—*Macpherson’s Lists*, Rajputana volume, page 27.  
<sup>3</sup> Aitchison, IV, page 7, rule 10. The rule is stated in this general form on the authority of Aitchison and of the note quoted in paragraph § 503.



(8) *The full criminal jurisdiction probably of the Treaty Chiefs, and certainly of the Sanad Chiefs so empowered, does not extend to the trial of persons of European or American nationality.*

(9) *In the Sanad States of Bundelkhand, where the Chief has not been specially empowered, the Political Agent tries all heinous offences and may interfere in other cases at his discretion.*

(10) *It is, however, the policy of Government to avoid unnecessary interference with the Chiefs of these States; and even in important cases, the Political Agent, if the Chief is competent, may confine himself to confirming, annulling, or reversing the decision. Whether interference is necessary or not will largely depend on the knowledge and experience of the Chief and the character of his judicial arrangements.*

(11) *The powers of British officers exercising residuary jurisdiction in Central India have been defined in terms of British laws by notifications issued under the executive authority of the Governor-General in Council.*

§ 510. The Rajasthanik Court in Kathiawar may properly be noticed in this chapter, because it exercises a jurisdiction delegated in part by the Chiefs and in part by the British Government, and that part of the jurisdiction which has been delegated by the British Government is residuary jurisdiction and was exercised by the Agency officers. When the judicial arrangements of Kathiawar were re-organised by Major Keatinge in the years 1863 to 1866 inclusive,<sup>4</sup> one of the principal causes of outlawry was left unremedied, and might, indeed, have been even aggravated had there not been a general belief in the Province that a remedy would be applied.<sup>5</sup> It is no exaggeration to say that before we petrified possession by preventing war there were thousands of landholders, Girasias and others, in Kathiawar, who were, if language implying ideas of law can be properly used to describe a state of anarchy, the petty sovereigns of their own holdings, and who, at any rate, exercised in their own villages an exclusive jurisdiction, so far as any jurisdiction was exercised at all. These landholders, free from all effective rule or control, professed allegiance to this considerable Chief or that according to circumstances and the chances of war. The bigger Chiefs collected tribute from an area which expanded or contracted with their degree of strength to enforce their demands. With good luck the Girasia of a village or two might rise to be the founder of a State and assume the title of Thákur or Raja. With bad luck an independent Girasia might fall into a subordinate position beneath some Chief or *Talukdar*, to whom he would surrender some part of his lands or rights, probably as the price of protection or forbearance. But neither the payment of tribute nor the acknowledgment of subordination seems to have upset the theory of the Girasia, that he was, or ought to be, uncontrolled in his dealings with his own original or remaining domain.<sup>6</sup> In the larger States there was a special cause which stimulated the kaleidoscopic shifting of jurisdictions. It was the custom to assign certain villages to the *Bhayad*, that is, to the cadets of the ruling house, the collateral relatives of the Chief. These assignments were intended for maintenance only; but if a member of a *Bhayad* was strong enough to do so, he would set up a separate State of his own.

In 1863 it was estimated that there were some fifteen thousand subordinate Girasias in the Province; and one effect of Major Keatinge's re-organisation was to leave many or most of them at the mercy of their Chiefs. Between the Chief and his *Bhayad* and the Chief and his Girasias there is a natural opposition of interests, and in early days the Agency officers sought to compose the ever-recurring disputes by political mediation. This process failed; proceedings were desultory; decisions were not enforced or were re-opened; cases dragged on for twenty, thirty, or even forty years; and crowds of petitioners followed the camps of the Political Officers. To evolve settled civil rights out of a chaos of conflicting semi-political claims required more than attempted compromise and well-meaning advice. The case was one for a survey of lands and the exercise of a special civil jurisdiction.

<sup>4</sup> For Major Keatinge's proceedings and the origin and nature of our criminal residuary jurisdiction in Kathiawar, see paragraphs § 192 to § 201.

<sup>5</sup> See memorandum by Colonel Law in Pro., Political A, July 1872, Nos 251—254. The authorities for the greater

part of this paragraph will be found in Sir William Wedderburn's memorandum of November 20, 1870, in the same Proceedings.

<sup>6</sup> This theory of the position was long lived. See paragraph 8 of Mr. Peile's No. 149, dated April 18, 1876—Pro., Political A, June 1877, Nos. 209—220.

The arrangements of 1866 cleft in two with a clean stroke the mass of Girasia and other cases more or less of a civil nature, which were chronically pending between pretty powerful subjects and the Darbars. The cases which were within the jurisdiction to be exercised by the Chief according to his class were henceforth to be decided by him, and cases beyond the powers of the Chief were to come under the cognizance of the Agency officers in the exercise of their residuary jurisdiction. An immediate consequence of this division of cases was that a multitude of Girasias, whose claims were within the judicial competence of their Chiefs, could no longer petition the Agency officers to redress their grievances. In a Giras case within his powers a Chief became a judge in his own cause, and a judge from whose decision there was no appeal. The Girasia whose case the Chief decided was thus sent back for redress to the very person of whose acts he complained.<sup>7</sup> The evil was acknowledged; and though the Chiefs at first evinced reluctance to meet the views of Government, they eventually, in 1871 or 1872, deputed representatives to Poona and Bombay, where discussions extended over several weeks, part being taken in them by Bombay Political Officers versed in Kathiawar affairs.<sup>8</sup> At length a scheme was settled which was submitted for acceptance by the Chiefs of the first and second classes as their proposal, and was approved and sanctioned by Government in 1873.<sup>8</sup>

§ 511. The scheme comprised a survey and a settlement of lands and rights, and the establishment of the Rajasthanik Court to attest the records of rights and determine matters in dispute between Chiefs and *Bhayads* or Mulgirasias. By the word Mulgirasia, as used in the rules<sup>9</sup> establishing the Court, is meant an original proprietor or descendant of an original proprietor who, retaining a part of his landed property or rights over landed property, has made over the other part to a Chief. And the word includes Girasias holding or claiming rights similar, in the judgment of the Rajasthanik Court, to those of Mulgirasias. If a *Bhayad* or Mulgirasia accepts the terms offered to him by the Darbar at the time of survey and settlement, the result is registered by the Court. If the terms are not accepted, he may apply to the Court, who will decide the matter. From the order of the Court there is no appeal, but its proceedings are subject to the general control of the Paramount Power exercised through the Political Agent in Kathiawar. Cases are heard by the President and two members of the Court.<sup>10</sup> The President is appointed by Government from among persons proposed by the Darbars. The members of the Court are six in number and are selected by Government from among twelve persons named by the Darbars. If the President and the two sitting members cannot agree, the case is referred to the Political Agent, whose decision is final.

§ 512. The Court takes cognizance of all Giras cases arising in all the States of Kathiawar of whatever class. The jurisdiction of the Court is appellate in respect of all cases arising in States of the first and second classes and in respect of cases within the limited jurisdiction of States of any lower class; but in respect of cases beyond the limited jurisdiction of these States, which formerly came under the residuary jurisdiction of the Agency officers, the Court exercises an original jurisdiction.<sup>11</sup> The Bombay Government explained that the distinction drawn between the original and appellate jurisdiction of the Court was one rather of form than of reality. "The smaller States," they said,<sup>12</sup> "cannot be recognised as possessing a right to pass formal decisions in the cases beyond their ordinary cognizance, but they will have the same opportunity of offering terms to their Girasias, which will in point of fact amount to passing a decision appealable to the new Court." In July 1873 the Acting Political Agent, Kathiawar, very concisely described the peculiar position of the Court. "It exercises," he said,<sup>13</sup> "a jurisdiction partly delegated by the Chiefs, and partly transferred from the Agency Courts, and may be said to be established by the Darbars under regulation and sanction by Government."

<sup>7</sup> Sir Charles Wood's despatch No. 41, dated December 30, 1865.

<sup>8</sup> Pro., Political A, July 1872, Nos. 251-254; May 1873, Nos. 292-294, July 1873, Nos. 181-185.

<sup>9</sup> The rules are in Aitchison, VI, pages 217-221, and may be referred to for a more elaborate definition of Mulgirasia and further details.

<sup>10</sup> By supplementary rule 3 the President may, if neces-

sary, associate with himself either one or two Chief Kharbharis in place of a member or members of the Court.

<sup>11</sup> Bombay Resolution No. 762, dated February 4, 1873; Pro., Political A, July 1873, Nos. 181-185.

<sup>12</sup> Bombay Resolution No. 1533, dated March 12, 1873; *Ibid.*

<sup>13</sup> Pro., Political A, Oct. 1873, Nos. 221-224.

§ 513. The arrangements above described were sanctioned in 1873 for three years only, but have been continued by successive renewals of sanction up to date. Working and continuance of the Court.

The survey and settlement conducted by the Darbars under the superintendence of a British officer, have proved a very extensive undertaking. By March 31, 1893, the Court had settled <sup>14</sup> 964 boundary disputes; and its proceedings were recorded in six volumes of decisions in land cases and 1,809 statements of rights; which means that in that number of cases the relative rights of the *Bhayad* or Mulgrasia and the Darbar have been recorded in minute detail.<sup>15</sup> It was supposed that the survey would strike at the root of the evils to be eradicated by providing against all encroachments in time to come.<sup>16</sup> But the latest information is that Giras disputes are chronic, that the flow of cases into the Court has outstripped the rate of disposal, and that the suits instituted in the year ending March 31, 1893, numbered 343, or 123 above the average. At the present moment (November 1894) the Secretary of State has sanctioned the retention of the Court for a further period extending to December 31, 1895; but it appears to be acknowledged that means will be necessary to maintain the decisions of the Court and apply them as precedents in fresh disputes; and proposals have been invited for a reduced establishment at less cost. The expense is borne by the Darbars,<sup>17</sup> and on this last occasion of renewal of sanction, six States refused to agree to the continuance of the arrangements. Their dissent was, however, overruled.<sup>18</sup> The only principle that we need deduce from this narrative by way of summary is that *when a number of States have joined with the British Government in establishing a Court to exercise certain civil jurisdiction in State territory, certain of these States may not withdraw from the arrangement except with the permission of the Paramount Power.*

§ 514. In so far as the power and jurisdiction of the Rajasthanik Court<sup>†</sup> spring from the regulation of British residuary jurisdiction by the British Government, the case resembles the cases heretofore discussed of the exercise of British jurisdiction in State territory independently of any express grant. So far as the power and jurisdiction of the Court may be ascribed to overt acts of the States of Kathiawar conferring the same upon it, the case resembles the cases which we are about to discuss, *viz.*, those in which the jurisdiction of the British Government, or of some wholly or partially British tribunal, is avowedly based upon the express grant or deliberate act of the State authorities. And we may here redeem the promise made in paragraph § 456 to distinguish between the cession and the delegation of jurisdiction. The distinction, indeed, is apparent on the face of the Foreign Jurisdiction and Extradition Act. The preamble recites that the power and jurisdiction which the Governor-General in Council has "within divers places beyond the limits of British India" have "from time to time been *delegated* to Political Agents and others acting under the authority of the Governor-General in Council;" and *treaty, capitulation and grant* are expressed in the preamble as being amongst the means by which the power and jurisdiction have accrued. Section 4 of the Act is even clearer. It says—"The Governor-General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and *may delegate the same* to any servant of the British Indian Government in such manner and to such extent as the Governor-General in Council from time to time thinks fit." Clearly, so far as regards any jurisdiction originating in an express grant, what the Act contemplates is that the jurisdiction should be ceded to the Governor-General in Council, and that the Governor-General in Council should then proceed to delegate the jurisdiction so acquired, as he sees fit, to officers who will make it practically operative. Accordingly where there is British jurisdiction in State territory which the Governor-General in Council exercises through servants of the British Indian Government avowedly in consequence of an express grant by a Ruling Chief, we propose to call that jurisdiction ceded jurisdiction; which it clearly is, if regard be had to its origin, though it is also delegated jurisdiction, if regard be had to the manner of its exercise. The most familiar illustration of ceded jurisdiction is the jurisdiction

<sup>14</sup> Pro., Internal A, October 1887, Nos. 409-411.

<sup>15</sup> Pro., Internal A, August 1894, Nos. 22-56.

<sup>16</sup> Secretary of State's despatch No. 49, dated April 17, 1873, paragraphs 6-7; Pro., Political A, May 1873, Nos. 292-294.

<sup>17</sup> Paragraph 9 of Bombay Government letter No. 1970, dated April 8, 1873.

<sup>18</sup> Secretary of State's despatch No. 76, dated October 11, 1894.

over railway lands within State limits, and we shall adduce below some other illustrations. On the other hand, there are cases in which a Darbar does not directly grant jurisdiction to the Governor-General in Council to be delegated by him to others, but of itself, with or without communication with the Supreme Government, authorises some British officer or some specially constituted tribunal, whether it be a mixed Court or consist entirely of British officers, to exercise certain of its own powers. Here the jurisdiction is delegated by the Darbars; and we propose to limit the term delegated jurisdiction, as about to be employed, to the jurisdiction exercised by special tribunals or British officers so empowered. Thus there are two kinds of delegated jurisdiction, *viz.*, delegated (1) by the Governor-General in Council or (2) by a Native State. In all ceded jurisdiction there must be delegation by the Governor-General in Council for the purpose of conducting particular trials. But when we speak of delegated jurisdiction, we shall mean, unless the contrary appears from the context, jurisdiction delegated by the Darbars. If they make a grant to the Governor-General in Council, that is a cession. Delegation implies subordination, and it is out of place to speak of a subordinate State as delegating anything to the Paramount Power. Indeed, what we propose to term delegated jurisdiction is not, in strictness, British jurisdiction at all. It is State jurisdiction delegated by the Ruling Chief or authority for the time being supreme in the State to a tribunal in which the sole presiding officer, or one or more of the presiding officers are servants of the British Indian Government.

§ 515. We shall return below to the case of special Courts sitting in State territory for the trial of particular cases. The case of Sala-ud-din, Bhopal, 1888. In explanation of what is meant it will suffice to quote here the case of Sala-ud-din, Bhopal. This man was a creature of the deposed Nawab, Sadik Hasan, and was convicted of torturing prisoners when employed in the city of Bopal as Kotwal. In August 1888 his wife petitioned the Governor-General in Council for a re-investigation of the case. Sala-ud-din was charged with certain other persons and was tried and sentenced to ten years' imprisonment by Colonel Kincaid, Political Agent in Bhopal. The sentence appears to have been confirmed by the Agent to the Governor-General, Central India. In the first paragraph of his judgment, Colonel Kincaid stated that the Begam of Bhopal had made over the prisoners for trial, and that they were charged in his Court under the authority of the Agent to the Governor-General. The Governor-General in Council declined to interfere. In the course of the discussion Mr. Harvey James, Secretary in the Legislative Department, observed—“A British Indian official can exercise in a Native State any jurisdiction which the Ruler of the State authorises him to exercise and which the officer is permitted by the Governor-General in Council to exercise.” Sir Andrew Scoble, the Law Member of Council, agreed; but he added a qualification which need not be repeated here, because it was not accepted by the Viceroy, Lord Dufferin.<sup>10</sup> Colonel Kincaid having tried the prisoners as being made over to him for trial by the Begam, this was a clear case of jurisdiction delegated by a Ruling Chief to a British officer.

§ 516. We may notice next the case of British jurisdiction in Kashmir, because it is a peculiar one, and does not fall wholly under any single head in our discussion. In the first place, the British Government acquired certain authority by negotiation from the Maharaja of Kashmir. How much of the authority expressed to be acquired would have actually belonged to the British Government without negotiation is a question which we need not attempt to solve. Next, the British Government proceeded by virtue of this authority to delegate certain powers to British officers in Kashmir. Finally, whatever jurisdiction the British Government had acquired by negotiation in Kashmir, and whatever jurisdiction that Government had in that State apart from any acquisition by negotiation, were both regulated by proceedings in which it was considered unnecessary to obtain the concurrence of the Darbar. The Kashmir authorities were, however, informed of the arrangement as a matter of courtesy.

The case may be said to begin with a notification published on March 28, 1873, which declared—“By virtue of authority duly acquired in that behalf by agreement with the Maharaja of Kashmir, the Governor-General in Council is pleased,

The Rules of 1873.

<sup>10</sup> *Proc. Internal A*, October 1868. Nos. 124-127.

under sections 4 and 5 of Act XI of 1872 (*The Foreign Jurisdiction and Extradition Act*), to delegate to the British officer for the time being on duty in Kashmir the powers described in the following Regulations." Then came the rules, of which we need quote only two. It was provided that the British officer "may direct any European British subject who is travelling or residing in Kashmir, and who is guilty of any gross misconduct, to leave Kashmir forthwith, and may punish any person knowing of such direction and disobeying the same with rigorous or simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." Another rule established the Mixed Court. It said—"Civil suits between European British subjects or their servants not being subjects of the Maharaja on the one side, and subjects of His Highness the Maharaja of Kashmir on the other side, shall be decided by a Mixed Court composed of the said British officer and the Civil Judge of Srinagar, or other officer specially appointed on this behalf by the Maharaja of Kashmir." The agreement referred to in the preamble of the rules was not a formal convention or treaty. The rules were accepted in writing by the Kashmir Vakil on behalf of the Maharaja.<sup>20</sup>

§ 517. The Mixed Court did not work well<sup>1</sup> and eventually it ceased to work altogether. In 1891 no suits had been heard by the Mixed Court for several years.<sup>2</sup> In the years 1888 to 1891 it was determined to abolish the Mixed Court and to place the jurisdiction generally on a footing in accordance with existing requirements. On April 27, 1891, the Kashmir State Council was informed that "inasmuch as the Governor-General in Council possesses full personal jurisdiction over subjects of Her Majesty, who may happen to be in the territories of the Maharaja, it would not ordinarily be necessary to pause before issuing such orders concerning them as might appear from time to time to be necessary." But as the existing regulations had been published with the assent of the late Maharaja, it was thought desirable to give intimation of the intended arrangements which were then described. On the criminal side the Resident in Kashmir and his Assistant were to have the necessary powers of inquiry or trial in cases against (1) European British subjects; (2) Americans; (3) Europeans of any nationality other than British; (4) Christians of European descent; (5) Native Indian subjects of Her Majesty, such Indian subjects being merely either visitors to the territories of the Maharaja or the servants of a European British subject; or (6) British subjects accused of having committed offences conjointly with European British subjects. The trial of Native Indian subjects who ordinarily dwell or carry on business or personally work for gain within Kashmir territories was ordinarily to rest with the Courts of the Darbar. But it was "to be distinctly understood that any such person convicted by such Courts has the right of making a representation to the Resident in Kashmir, and that if that officer considers there is ground for interference, his representation on the subject to the Darbar will be attended to." On the civil side the Resident and his Assistants were to be invested with powers to dispose of civil suits in which (1) both parties are subjects of Her Majesty, (2) the defendant is a European British subject, (3) the defendant is a Native Indian subject of Her Majesty and at the time of the commencement of the suit does not ordinarily dwell or carry on business or personally work for gain within the territories of the Maharaja. All other suits between subjects of Her Majesty on the one hand and subjects of the Maharaja on the other hand were ordinarily to be triable in the Courts of the State. At the same time the Darbar was informed that the Mixed Court had been abolished because the Government of India did not consider that it had proved to have been a satisfactory institution. On the same day, *viz.*, April 27, 1891, the Resident reported to the Government of India that the above intimation had been conveyed to the Kashmir Darbar. On May 8, 1891, the necessary notifications were published in the Gazette for the purpose of carrying out the arrangements just described. On September 7, 1891, the Kashmir Council simply recorded their assent "to the stipulations required by the Government of India on the subject of the exercise of civil and criminal jurisdiction within the territories" of the Maharaja. The

<sup>1</sup> Pro., Political A, April 1873, Nos. 187-196.  
<sup>2</sup> Pro., Judicial A, August 1880, No. 1.

<sup>20</sup> Demi-official from the Resident, dated February 12, 1891, Pro., External A, May 1891, Nos. 89-97.

record does not show what the Council understood to be included in the stipulations; but the letter of April 27, 1891, included two stipulations, namely, first, that the Kashmir authorities should enforce the attendance of witnesses before the Courts constituted by the Governor-General in Council; and secondly, that the suits left to Kashmir Courts in which British subjects were parties should be tried by selected officers.<sup>3</sup> In one of the notifications of May 8, 1891, it was expressly declared that "such portions of Foreign Department Notification No 605-P., dated 28th March 1873"—(i.e., of the rules of 1873)—"as are inconsistent with these orders are hereby cancelled." It is understood, therefore, that the powers of expelling certain persons from Kashmir acquired from the Maharaja and delegated to the British officer in Kashmir have not been rescinded.<sup>4</sup>

#### Summary.

§ 518. The proceedings in this case appear to imply three principles:—

(1) *The British Government can acquire from a Ruling Chief a limited and specially defined jurisdiction, and can delegate the same to its own officers.*

(2) *The British Government is competent, without the consent of the Darbar, to regulate the exercise of British jurisdiction by British officers in State territory.*

(3) *For this purpose the circumstances under which the British Government became possessed of the jurisdiction, which it in fact has, are immaterial.*

The last of these principles rests not on what was said but on what was done. The proceedings of 1891 not only regulated the jurisdiction of the British Government over certain persons, subjects of Her Majesty, but also altered the arrangements of 1873 expressed to be made by virtue of authority acquired from the Maharaja. And both of these things were done without a request for any further authorisation.

§ 519. It is not necessary to say very much on the subject of ceded jurisdiction. Where there is an undoubted grant of jurisdiction by a Ruling Chief

#### Ceded jurisdiction.

and the British Government proceeds to act upon that grant and to provide laws and courts and procedure, it is unnecessary to fortify the position by demonstrating usage as it has been thought convenient to do in respect of the Cantonment Residency, and residuary jurisdictions, which belong, without any grant, to the Paramount Power. The application of laws and the constitution of courts in territory over which full civil and criminal jurisdiction has been ceded have been discussed in many cases at great length and with much elaboration; but it would serve no useful purpose to reproduce any of these discussions in this volume. The results are embodied in numerous notifications, of which it is probable that all of any present importance, up to the date of compilation, will be found in Mr. Macpherson's Lists. To Mr. Macpherson's volumes, therefore, Political Officers should turn when in need of precedents to show what arrangements can or should be made for the exercise of ceded jurisdiction by British officers.

§ 520. It would have been necessary to explain here the obligation of Ceded jurisdiction within Railway lands. Ruling Chiefs to cede jurisdiction on railway lands, had we not treated that subject fully in paragraphs § 171 to § 176 inclusive. As an illustration of cessions of jurisdiction over railway lands we may refer to notification No. 1328-I., dated March 23, 1891 (as amended by some subsequent notifications), by which the Governor-General in Council applied the Railways Act, No. IX of 1890, to various portions of railways lying in State territory, and issued certain orders under and in connection with that enactment. The preamble and schedule of that notification show that between seventy and eighty States therein mentioned ceded to the British Government full jurisdiction, *or all the jurisdiction they possessed* (a phrase which covers the case of States with limited jurisdiction),

<sup>3</sup> Pro., External A, June 1889, Nos. 165-170.  
 " " May 1891, " 89-97.  
 " " July 1891, " 162-166.  
 " " Nov. 1891, " 34-36.  
 See also Aitchison, IX, pages 346, 362-365, and appendix 1.  
 The civil and criminal power of the British Joint Comma-

sioner, Ladak and Leh, under the treaty of 1870 have probably been superseded by the Notifications of 1891.

<sup>4</sup> See as to this paragraph § 706 below. For the powers of the British Agent in Gilgit and his Assistants, see Notifications Nos. 1230-1231, dated May 11, 1893; Pro., Frontier A, May 1893, Nos. 44-46.

over lands occupied by more than twenty-five<sup>6</sup> railways within their respective territories. As a form of notification which seems in some cases to be very convenient we may instance notification No. 1007 I., dated March 21, 1884. This recites that Maharaja Holkar and the Chiefs of Nabha and Pataudi "have ceded to the British Government full jurisdiction within those portions of land which lie within their respective States, and are occupied, or may be hereafter occupied, by the railways comprised in the Rajputana-Malwa Railway system, including the lands occupied as stations, out-buildings, and for other railway purposes." It then proceeds :—

"In exercise of this jurisdiction, and of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879, and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to provide as follows for the administration of justice within the aforesaid portions of land :—

"(1) All laws for the time being in force in the Nimar District of the Central Provinces are hereby extended to the portion of the aforesaid lands which lie in the State of Indore, and is situated to the south of the river Nerbudda.

"(2) The Deputy Commissioner of the Nimar District, the Commissioner of the Nerbudda Division, and the Chief Commissioner of the Central Provinces for the time being, shall respectively exercise, within this portion of the aforesaid lands, the same executive powers as they may respectively exercise within the British territories subject to their administration.

"(3) All British Courts having jurisdiction within the Nimar District shall exercise the same jurisdiction within this portion of the aforesaid lands."

The administration of police is then dealt with and the legal apparatus of the Gurgaon District in the Punjab is applied to the railway lands in the Nabha and Pataudi States in the same way as the laws and courts of the Nimar District are put in operation on the Indore Railway lands mentioned in the notification.<sup>6</sup> A more recent precedent of the same kind is notification No. 4167 I., dated December 6, 1890, relating to Patiala and Kalsia lands occupied by the Delhi-Umballa-Kalka Railway.<sup>7</sup> We may note here that the lands occupied by the East Indian Railway in the Central India States of Baraundha, Kothi, Mailhar, Nagod, Panna, Rewa, and Sohawal have been ceded to the British Government in full sovereignty, and therefore now form part of British India.<sup>8</sup> The lands occupied by the North-Western Railway in the Bahawalpur State have also been ceded to the British Government in full sovereignty; they have been annexed by proclamation to the Lieutenant-Governorship of the Punjab and the law in force in them has been settled by Act XIII of 1883.<sup>9</sup>

§ 520A. Another very useful form of notification has been communicated to Political Officers since this Chapter was in print. It meets the case of the application of a particular enactment to State territory under British jurisdiction just as the notification cited in the last preceding paragraph meets the

Form of notification for applying British Indian Enactments to State territory under British jurisdiction.

case of the application of a whole body of laws to territory in that category. The form is to be adopted in all cases in which

it may be deemed sufficient to apply an enactment without any modifications save formal ones. In cases in which more elaborate modifications or substantial changes are considered desirable, the more convenient course will, as a rule, be to reproduce in the applying notification the provisions of the enactment to be applied *in extenso* and in the exact form in which it is desired that they should run after application. The form\* stands thus :—

"In exercise of the powers conferred by sections 4 and 5 of the Foreign

<sup>6</sup> This computation reckons seven separate railways under the term Rajputana-Malwa Railway, and counts the four branches of the Southern Mahratta Railway as being each a separate railway.

<sup>7</sup> *Macpherson's Lists, Central India*, page 223. As to the police administration, see references given in the footnote to Notifications Nos. 4-P., dated January 6, 1891, and 1454, dated March 10, 1891.

<sup>8</sup> *Macpherson's Lists, Northern India*, page 119.

<sup>9</sup> *Ibid. Central India*, page 186. There are many other States which have ceded or engaged to cede railway lands in full sovereignty; e.g., Baroda in 1856, Rewa in 1863, and Rampur, Gwalior, Dhar, Jabua, and Jobat in 1864. See

*Railway Precis*, I, pages 8, 19, 49, 50, 53, and 57.

<sup>6</sup> For the Notification of March 23, 1891, relating to lands of more than 25 railways in some 70 to 80 States, see *Macpherson's Lists, Rajputana*, pages 86-93; *Central India*, pages 211-218; *Northern India*, pages 112-118. For further information on railway jurisdiction generally, it seems quite sufficient to refer to the same work. See—*Northern India*, Volume, pages 32-36, 75-125, 133-142; *Southern India—Hyderabad* Volume, pages 239-249 and *Madras and Mysore* Volume, pages 141-145; *Rajputana* Volume, pages 66-115; *Central India* Volume, pages 28-32, 186-238.

As to the Bahawalpur lands, see *Northern India* Volume, pages 95-121.

\* *Pro., Internal A*, March 1895, Nos. 336-342.

Jurisdiction and Extradition Act (XXI of 1879) and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to apply the provisions of \_\_\_\_\_ to the \_\_\_\_\_ so far as they may be suitable.

“ Provided that for the purpose of facilitating the application of the provisions of the enactment hereby applied, any Court in \_\_\_\_\_ may construe them with such alterations not affecting the substance as may be necessary or proper to adopt them to the matter before the Court.

“ Provided also that references to the Local Government shall be read as referring to \_\_\_\_\_ and references to British India or territories subject to a Local Government as referring to the \_\_\_\_\_

“ (Add similar clauses, if necessary, should the words “ Chief Controlling Revenue Authority,” “ Collector,” “ High Court,” “ Magistrate of the District,” or “ District Magistrate” occur and require alteration.)”

§ 521. Railway lands apart, there are a good many other lands and some stations in India where the British Government exercises a ceded jurisdiction. Nor

Jurisdiction in Berar. must we omit to mention the large province of Berar, where British jurisdiction is based on an assignment by the Native Government, made under the circumstances mentioned in paragraph § 5; that is to say, under the treaties of 1853 and 1860 the Berar districts are held by the British Government in trust for the payment of the Hyderabad Contingent and of certain other charges. In the language of article 6 of the treaty of 1853, the districts have been assigned “ to the exclusive management of the British Resident for the time being at Hyderabad, and to such other officers, acting under his orders, as may from time to time be appointed by the Government of India to the charge ” of them.<sup>10</sup> Berar is administered by a Commission like a British Province, and for the laws and arrangements there in force it is sufficient to refer to *Macpherson's Lists*.<sup>11</sup>

§ 522. A good many other places may be named in which the British Government exercises ceded jurisdiction. Other instances of ceded jurisdiction. Thus in 1847 the Chief of the Madras State of Sandur ceded police and magisterial jurisdiction over certain classes of persons within the plateau of Ramandrug, a place used as a hill sanitarium. The criminal jurisdiction is exercised by the

Ramandrug, 1847. Courts of the Bellary District.<sup>12</sup> In paragraph § 186 we have referred to the acquisition or lease of the Rajputana salt sources. By the treaties of 1869, Jaipur, and of 1870 and 1879, Jodhpur ceded jurisdiction in all matters connected with the manufacture, sale and removal of salt, and the prevention

Rajputana Salt Sources, 1869, 1870, of unlicensed manufacture and smuggling, 1879. within the limits of the Sambhar Lake and of the salt sources of Pachbhadra, Didwana, and Phalodi.<sup>13</sup> The necessary Courts have been established and regulations made.<sup>14</sup> We have mentioned in paragraph

§ 475 that the Maharaja of Mysore has renounced jurisdiction in the lands and buildings of the British Residency at Bangalore. Before that, the Maharaja had in 1881 renounced all jurisdiction in the civil and military station of Bangalore, 1881.

The Civil and Military Station of Bangalore, 1881. For the laws and rules there in force we may refer, as in many other cases, to Mr. Macpherson's Lists.<sup>15</sup> Jurisdiction in the station of Abu has been ceded by the Sirohi State, and the manner

The Station of Abu, 1845 to 1884. in which the jurisdiction is to be exercised has been defined by a notification of 1884. Some lands on Mount Abu were

<sup>10</sup> Aitchison, VIII, pages 352, 361, 362.

<sup>11</sup> *Southern India, Hyderabad*, pages 23 to 176.

<sup>12</sup> Aitchison, VIII, pages 103, 106. *Macpherson's Lists, Southern India, Madras and Mysore*, page 20. The Newar and Marwar portions of Ajmir-Merwara have been under British management since 1823 and 1824 respectively. In both cases the jurisdiction was ceded. See Aitchison, III, pages 9, 10, and 354-358; and *Macpherson's Lists, Rajputana*, pages 43-45. The subject is further dealt with in Chapter XXI in connection with the tendency to substitute *khairias* for treaties or formal agreements. See paragraphs § 741 and § 742 below.

The cessions of a limited civil jurisdiction in Mhow and Morar (afterwards acquired in sovereignty) which were obtained in 1869 are not noticed in the text because they would not be precedents now. They were inconsistent with the accepted doctrine that the British Government has full jurisdiction in Cantonments in State territory without any express cession on the part of the Darbar. See Pro., Judicial A., October 1868, Nos. 8-9; and July 1869, Nos. 8-11.

<sup>13</sup> Aitchison, III, pages 86, 104-110, 135-136, 165-179.

<sup>14</sup> *Macpherson's Lists, Rajputana*, pages 32 to 42.

<sup>15</sup> *Southern India, Madras, and Mysore*, pages 75-139.



made over to the British Government on certain conditions by the Sirohi Chief in 1845. The subsequent sessions of jurisdiction include Abu, Anádra, the Bazar at Kharári, and the road leading from the Abu sanitarium to the Abu Road railway station and the Bazar at Kharári. Civil and criminal jurisdiction in Abu and Anádra, except in cases in which both parties were Sirohi subjects, was ceded in 1866. And jurisdiction over the Kharári Bazar<sup>16</sup> was granted by *kharita* in 1881. The Raja of Keonthal has ceded full jurisdiction in Kasumti, which is a

Kasumti, 1885.

sort of suburb of Simla, and the exercise of the jurisdiction was regulated in 1885 on the principle applied in the cases of the Rajputana-Malwa and Delhi-Umballa-Kalka Railways in 1884 and 1890 (see paragraph § 520 above). In substance, jurisdiction has been given to the Simla Courts, and the Simla laws, rules and bye-laws have been put in force; but the powers of the Municipal Committee have been conferred on the Deputy Commissioner, and the Punjab Municipal Act has been slightly modified to adapt it to the locality.<sup>17</sup> The Rewa State has ceded full jurisdiction in the lands lying within that State which are known as

The Umaria Coal-fields, 1885.

the Umaria Coal-fields. Here again effect has been given to the intention of the cession by putting in work the laws and courts of a conveniently-situated district. A notification of 1885 provides that the laws for the time being in force in the Jabulpur District of the Central Provinces shall be in force in the Umaria Coal-fields; and that the Courts of the Jabulpur District shall have within those coal-fields the jurisdiction which they respectively have within that district.<sup>18</sup>

The Periyar Project Camps, 1892.

The Maharaja of Travancore has granted to the British Government criminal jurisdiction within the lands in his territory occupied by the Periyar Project Camps. The Penal Code, the Code of Criminal Procedure, and the Police Act have been applied by a notification of 1892; and the Courts of the Madura District have been empowered, for the purposes of these Acts, to exercise criminal jurisdiction within the Camps lands.<sup>19</sup>

§ 523. We saw in the Bhuj Cantonment case (paragraph § 474) that the Government of India declined to declare certain civil stations in State territory to be parts of the Presidency of Bombay. The civil stations named by the Bombay Government were Kolhapur, Songadh, Jetalsar, Sádra, Rajkot, and Wadhwan.

We have explained the case of Kolhapur in paragraph § 478. All of these stations have been constituted under agreements,<sup>20</sup> but in the absence of any decisions of the Government of India as to the effect of the Songadh, Jetalsar, and Sádra agreements, and of any report as to the exact extent and nature of the jurisdiction habitually exercised in each of these civil stations, it is not advisable to express any opinion as to the origin of British jurisdiction in these localities. The cases of Wadhwan and Rajkot have been the subject of correspondence with the Secretary of State. On March 17, 1885, Mr. Justice Bayley of the Bombay High Court ruled that the station of Wadhwan is included in British India, chiefly on the ground that the place was given to the British authorities in perpetuity. Later on in the same year a Bench of the same Court held that the station of Rajkot (of which the site had also been assigned in perpetuity to the British authorities) is not part of British India. The Government of India addressed the Secretary of State in January 1891 in regard to these decisions, and said of both civil stations that jurisdiction was acquired under the agreements printed in Aitchison. The arguments upon which the Bench proceeded appeared to them to be better founded than those upon which Mr. Justice Bayley relied, and apart from legal considerations they thought it probable that when the agreement with the Chief of Wadhwan was executed, there was no intention of converting the land thereby assigned for a specific purpose into British territory, nor did it appear ever to have been regarded or treated as such by any executive authority. "We consider it," they said,<sup>1</sup> "a matter of some importance to remove

<sup>16</sup> Aitchison, III, pages 141, 196-198. For the laws and rules in force, see *Macpherson's Lists, Rajputana*, pages 46-57. The text is partly founded on page 46.

<sup>17</sup> *Macpherson's Lists, Northern India*, pages 84-85.

<sup>18</sup> *Macpherson's Lists, Central India*, page 57.

<sup>19</sup> Pro., Internal A, February 1892, Nos. 276-280.

<sup>20</sup> For Rajkot and Wadhwan agreements, see Aitchison, VI, pages 202, 282-287. The Songadh, Jetalsar,

and Sádra agreements are enclosed in Bombay Government letter No. 106, dated January 8, 1890. Pro., Internal A, February 1891, Nos. 236-246. The Bombay Government have said in a letter No. 544, dated September 1, 1894: "British jurisdiction in Sádra Civil Station rests not upon a Notification under the Foreign Jurisdiction Act but upon very long-established custom and unquestioned consent."

<sup>1</sup> Pro., Internal A, January 1891, Nos. 233-237.

from the mind of the Chief of Wadhwan and from the minds of the other Kathiawar Chiefs any possible cause for suspicion that by making such grants they were parting with their sovereignty over the land assigned; and we think it preferable that our jurisdiction in such stations should be exercised under Act XXI of 1879, rather than by treating them as Scheduled Districts of the Bombay Presidency." The Secretary of State agreed that the civil station of Wadhwan ought not to be considered as British territory. He thought it sufficient, without issuing any formal declaration to this effect, "to cause an intimation to be made to the Chief of Wadhwan that the Government of India have never regarded, and do not now regard, the civil station in his State as British territory, and to point out to him the later decision of the Bombay High Court, relating to the similarly circumstanced station of Rajkot, in accordance with which any future case turning on the same issue will probably be decided." The Bombay Government was instructed accordingly.<sup>3</sup>

§ 524. Of the facts regarding ceded jurisdiction stated above, no summary seems needed. We may now deal with delegated jurisdiction in the special sense in which we propose to use the term (*vide* paragraph § 514 above); and as

Delegated jurisdiction.

The case of Vrijeshji Vrijnathji Maharaj, of Nawanagar, 1882.

an instance of the delegation of jurisdiction by a Chief for the purpose of a particular trial we may adduce the case of Vrijeshji Vrijnathji Maharaj, of Nawanagar, who was convicted by the Chief Court of Criminal Justice in Kathiawar of dishonestly receiving stolen property. The property in question was the contents of a parcel stolen from the Imperial Post Office at Nawanagar. Vrijeshji Vrijnathji was a person of great sanctity amongst the Hindu community, and the case was made over by the order of the Chief of Nawanagar to the Kathiawar Agency Court. Vrijeshji Vrijnathji took exception to the jurisdiction. On this the Bombay Government remarked<sup>3</sup>—"The Political Agent's Court has by its original constitution, under the orders of the Court of Directors, the power to try offenders of a certain class, namely, powerful and influential breakers of the public peace, even without the consent of the Chief to whom the offender is subject, and more lately, since the jurisdiction of these Kathiawar Chiefs was classified, cases beyond the jurisdiction of any Chief have been tried by the Agency Court. And there can be no question but that the Agency Court is also competent to try any case that may be committed to it with the consent of the Chief concerned. *It is in fact a recognised function of all Political Agents under this Government to try cases when jurisdiction for the purpose has been delegated to them by the Chiefs to whom they are accredited.*" It subsequently appeared that the case had not been formally committed to the Chief Criminal Court, but transferred to the Political Agent by order of the Jam of Nawanagar after it had been committed by a Nawanagar Magistrate to the Nawanagar Sessions Court. The Government of India, however, agreed with the Bombay Government that the transfer of the case might be accepted as fulfilling the objects of a committal.<sup>4</sup>

§ 525. Again, the case of Prabhás Patan affords two recent instances of the delegation of jurisdiction to a special commission or Court in which officers of the British Government were employed. Prabhás Patan, as already mentioned in paragraph § 22, is celebrated in history. It was the seat of the famous shrine of Somnath, which was again and again destroyed by the Muhammadans—first by Mahmud of Ghazni,—and as often rebuilt by the Hindus, before it was finally reduced to ruins in 1706 by the order of Aurangzib. The well-known Ahaliya Bai, the widow of Holkar, built a new temple of Somnath in 1783. This temple still exists and is frequented by numbers of pilgrims.<sup>5</sup> For Hindus Prabhás Patan and its neighbourhood possess a peculiar sanctity, not only because the Somnath temple and a cluster of other holy places are found here, but also because tradition points to this locality as the scene of the death of Krishna. With this history and associations and with a population divided between the two creeds, it is not surprising that at Prabhás Patan the tide of Hindu and Muhammadan feeling runs high. The city is in the territory of the Nawab of Junagarh, and when in 1892 some Brahmans were assaulted there, a warning

<sup>3</sup> Pro. Internal A, July 1891, Nos. 139-140.

<sup>4</sup> Bombay to Government of India, No. 188, dated July 15, 1881.

<sup>5</sup> Pro. A, Judicial I, September 1882, Nos. 4-36.

<sup>6</sup> These particulars are taken partly from the report of Colonel Hunter's Commission and partly from the judgment of the Special Court, dated May 29, 1894.

was addressed to the Nawab by the Bombay Government. Referring to the differences between the adherents of the two creeds, the Nawab, on August 13, 1892, wrote that he "had thought fit, with a view to bring about finality of these differences, to delegate his powers to an independent Commission" to be nominated by Government. The Bombay Government approved this proposal and obtained the sanction of the Government of India to the deputation of certain Government officials to "settle" the disputes in question. Accordingly on January 4, 1893, Lieutenant-Colonel J. M. Hunter, Mirza Abbas Ali Beg, and Rao Bahadur Ranchhodlal Kapurchand Desai were appointed "to adjudicate" a certain dispute in Junagarh.<sup>6</sup>

This Commission was in effect a Board of Arbitration to which the Nawab had delegated his powers. The Commission made its report on April 25, 1893, but before its decisions were promulgated a very serious riot occurred at Prabhás Patan between rival religious factions. Eleven Hindus were killed on the spot and twenty-eight persons were wounded.<sup>7</sup> At the request of the Darbar the services of a Bombay Magistrate, a Parsi, were lent for the purposes of the preliminary inquiry. As the Sessions Judges of the Junagarh State had been engaged in the local investigation, the Darbar also applied for the services of two Bombay civil servants, both natives, to form a Special Court of Session for the trial of the prisoners. Eventually it was arranged that the Special Court should consist of the Honourable P. M. Mehta, being the Judicial Councillor of the Junagarh State, as President, and the two Bombay civil servants as members.<sup>8</sup> The Court thus constituted tried 73 persons, of whom 18 were sentenced to various terms of imprisonment.<sup>9</sup> In the correspondence with the Government of India a question arose whether the Nawab should be expressly told that the finality proposed for the order of the Special Court thus constituted would not "bar the prerogative of political review." The Government of India replied by a telegram, dated October 28, 1893—"Right of political review is in our opinion a matter of course and will be exercised, if necessary, but there is no occasion for giving express warning to this effect."

§ 526. There are also two good and recent precedents for the constitution of other delegations of authority to Special Courts for special trials. a special Court consisting of British officers for the trial of a particular case of unusual importance arising in a Native State. In Alwar, in the case of the murder of Kunj Behari Lal, and in Rampur, in the case of the murder of General Azim-ud-din Khan, authority was delegated by the Darbar to a Special Court of British Officers to try the persons accused. The facts connected with the murder of Kunj Behari Lal have been fully stated in paragraph § 60. It will be remembered that Mangal Singh, Maharaja of Alwar, died the day after Kunj Behari Lal was killed; so when arrangements had to be made for the trial of Major Ram Chandar and the other accused persons, the administration of the Alwar State was in the hands of a Council during the minority of the Chief. It was settled that the Alwar State should formally apply for the services of two English officers to conduct the trial. "The Special Court," said the Government of India,<sup>10</sup> writing to the Agent to the Governor-General, Rajputana, "will derive its authority from the Alwar State, and should be invested by formal proceedings of the State Council with powers to dispose of the case finally, subject to no appeal. In the event of any of the accused being found guilty, you will be at liberty to entertain, and, if necessary, forward to the Government of India, any petitions for mercy that may be submitted." The formal application was duly made. The services of Mr. H. F. Evans, District and Sessions Judge, Shajahanpur, and of Major Thornton, Officiating Resident at Jaipur, were placed at the disposal of the Alwar State Council; and on application of the Council the services of Mr. C. S. Bayley were also lent to make the preliminary inquiry. By a series of orders, dated August 19, 22, 29, and September 9, 1892, respectively, the Alwar State Council did as follows:—(1) they conferred on Mr. Bayley the powers of a District Magistrate within Alwar territory for the purpose of holding the preliminary inquiry: (2) they constituted Mr. Evans and Major Thornton a Sessions Court with the powers

<sup>6</sup> Bombay Government Resolution No. 6209, dated October 17, 1893.

<sup>7</sup> Statement enclosed in Bombay letter No. 6210, dated October 17, 1893.

<sup>8</sup> Bombay letter No. 496, dated January 26, 1894.

<sup>9</sup> Bombay letter No. 4824, dated July 16, 1894.

<sup>10</sup> Pro., Internal A, March 1893, Nos. 52-134.

of a High Court within Alwar territory for the purpose of holding the trial, but without assessors or jury: (3) they requested the Agent to the Governor-General, Rajputana, to be Judge of a Court of Reference in case Mr. Evans and Major Thornton should differ in opinion: (4) while decreeing that the preliminary inquiry and the trial should be held under the provisions of the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act as in force in British India, they made this proviso, as regards the trial, that the Judges should not be bound to admit any objection on a point of law which would, in their opinion, be calculated to interfere with the proper administration of justice in the case.

When it was agreed that the Agent to the Governor-General, Rajputana, should be the Court of Reference, the Government of India so far modified their previous orders as to direct that any petitions for mercy should be forwarded to them for disposal with his opinion.

§ 527. The facts connected with the murder of General Azim-ud-din Khan may be stated here; we shall have to refer to the case again in dealing with the murder of Azim-ud-din Khan, subject of extradition. The General at the time of his death was Vice-President of a Council which had been originally appointed to assist the Nawab, Mushtak Ali Khan, in consequence of the bad health of the latter, and was continued after his death on February 25, 1889. Safdar Ali Khan, a member of the ruling house, was nominally President, but the chief power in the State remained, as it had been before, with the General. Azim-ud-din Khan was a man of great energy and ability, eager for reform and impatient of obstruction. He had long served the Rampur State, but was looked upon as an outsider and his position and authority were resented by those who fancied they had a claim to both. Many more people were incensed against him because Pathans and Rampur subjects were dismissed and coveted posts given to more efficient men—foreigners in the State. Mustafa Khan, a Tahsildar at Derapur in the Cawnpore District, and his brothers were believed to have motives of enmity against Azim-ud-din Khan, and the Court eventually found that there was ample evidence of an intention and conspiracy on the part of the family of Abdulla Khan, the father of these men, to murder the General. Abdulla Khan, originally a Tahsildar in British employ, subsequently took service in the Rampur State, where he became a member of a Consultation Council in the time of Nawab Kalb Ali Khan, father of Nawab Mushtak Ali Khan. In 1887 Abdulla Khan took part in an intrigue to oust the General from power, and the General retaliated by proceeding against Abdulla Khan's estate for arrears of revenue, and on March 7, 1888, signed an order dismissing him from Council and forfeiting his pay. The General also in 1887 signed an order dismissing a son of Abdulla Khan from his post of Naib Tahsildar. On April 13, 1891, the General was present at a dinner given by Mustafa Khan, one of the sons of Abdulla Khan, as already mentioned. The General left the house in a dog-cart about 9-45 P.M. When he was passing a *sarai*, about 150 yards north of the house, a shot was fired which wounded the horse. The General drove on and was exposed to a converging fire from men posted along the wall of the *sarai* and in other directions. He was wounded in five places and carried to a house hard by, where he died in about an hour and a half. The murderers also killed one Hafiz Mubarak Ali, who had been a guest at the dinner and courageously advanced upon them after the General had been shot; and they wounded a constable who was in the neighbourhood under circumstances not clearly ascertained. Five persons were tried by the Special Court, of whom one, Asad-ulla Khan, a son of Abdulla Khan, was acquitted; and four were sentenced to death and hanged. The preliminary inquiry was made by Mr. Hardy, a Magistrate of the first class, whose services were lent to the Rampur State by the Government of the North-Western Provinces and Oudh. The case was tried by Colonel Newbery and Mr. Aikman; and as to the constitution of the Court we may quote their judgment:—"This Court, the services of the members of which were placed by the Government of the North-Western Provinces and Oudh at the disposal of the Council of Regency of the Rampur State, has been, by an order of the said Council, dated the 2nd May, 1892, constituted a special tribunal for the trial of certain persons accused of the murders and abetment of the murders of General Azim-ud-din Khan and Mubarak Ali Khan.

For the purpose of the trial this Court was invested by the Council with the powers of a High Court, as defined in the Charter, subject to the proviso that the trial was to be held without assessors or jury. The order constituting the Court directs that the trial be held under the provisions of the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act."

§ 528. As regards delegated jurisdiction, as we have used the phrase, a very

**Summary.**

brief summary will suffice. The case of Sala-ud-din, Bhopal, 1888 (see paragraph § 515) must here be taken into consideration, more especially in conjunction with the case of Vrijeshji Vrijnathji (paragraph § 524). On the whole the facts and orders appear to warrant these conclusions :—

(1) *An officer of the British Government can exercise in a Native State any jurisdiction which the Ruler of the State authorises him to exercise and which by practice or express permission of his superiors he is actually or constructively allowed to exercise by the Government which he serves.*

(2) *With the assent of the British Government, Special Courts, consisting wholly or in part of officers of that Government, may be constituted for the trial of particular cases in State territory; and Special Courts so constituted may exercise jurisdiction delegated to them for the occasion by Government of the State concerned.*

§ 529. We have reserved to the end of this chapter the jurisdiction exer-

**The Thagi and Dakaiti Department.**

cised in respect of Thagi and Dakaiti cases arising in Native States and by the officers of the Thagi and Dakaiti Department in the pursuit and arrest of offenders of certain classes in State territory. We have done so, because this jurisdiction cannot be classified under any of the heads of which we have made use; and indeed it is not expedient to attempt to classify it. It must be distinctly understood that we express no opinion on the question whether jurisdiction of these two kinds is ceded or delegated or residuary jurisdiction. It is possible that one kind or the other might in some places be classed under one head, and in other places under another head. We purposely leave the matter undefined, merely remarking that there is evidence to suggest that the jurisdiction may have been ceded or delegated in some States and authoritatively assumed in others.\* We may add that the whole subject has been recently under the consideration of the Government of India in connection with a draft of revised rules for the conduct of the departmental operations.

§ 530. There is on record a declaration of the Governor-General that thags

**The functions of the Department.**

"may be considered, like pirates, to be placed without the pale of social law, and be subjected to condign punishment by whatever authority they may be seized or convicted." This observation was made by the Marquis of Hastings before any organised system for the suppression of thags had been devised.<sup>12</sup> Systematic operations for the suppression of Thagi were begun<sup>13</sup> in 1830; and of these operations Captain Sleeman was appointed General Superintendent in 1835. Upon the Department so constituted the additional duty of watching dakaiti was imposed in 1839.<sup>14</sup> As a consequence of the re-organisation of the Police in British India which was effected in the years 1860 to 1863, the Thagi Department was abolished as a special agency in British territory, but maintained as regards Native States.<sup>15</sup> In 1865 the Government of India resolved that "the best chance of success in the measures for the suppression of thagi and dakaiti" lay "in working through the instrumentality of the Political Officers, with the agency of the Native officials of the respective Chiefs;" and that "all Political Officers engaged in the duties of the Thagi and Dakaiti Department must put themselves in free communication with the General Superintendent." These orders, however, did not prove effectual. The views held in 1875 by a good authority in respect to the functions of the Department appear in a note<sup>16</sup> by Mr. Aitchison, the Foreign Secretary. "It should be borne in mind," he said,

\* See as to this paragraphs 15, 16, and 18 of Colonel Hervey's No. 247, dated April 21, 1864, and references given in a note by Mr. Makbul Shah of the Thagi Department, dated March 6, 1895.

<sup>12</sup> Paragraph 7 of Colonel Hervey's No. 247, dated April 21, 1864, and paragraph 11 of his No. 199, dated April 21, 1864.

<sup>13</sup> Paragraph 8 of Colonel Hervey's No. 199, dated April 21, 1866.

<sup>14</sup> Paragraph 4 of No. 51-A, dated February 27, 1863, from Lieutenant-Colonel Bruce, Inspector-General of Police in India.

<sup>15</sup> Government of India, Foreign Department Resolution, No. 121, dated July 8, 1863.

<sup>16</sup> K. W. of Pro., Judicial A, November 1875, Nos. 1-3.

that the Department is not and could not reasonably be held to be responsible for the detection of all cases of thagi and dakaiti that occur in Native States. The Government of India could not undertake such a duty without taking on itself the police administration of the States and interfering with the internal government of the States in a way destructive of their autonomy, and not likely to be attended with very satisfactory results in other respects. What the Department is concerned with is not local dakaiti, for the suppression of which the Native States are responsible, but organised dakaiti which has ramifications over India, and is undertaken by tribes and committed in localities over which no one Native State has sole jurisdiction. While for this purpose it is necessary that the Department should receive all available information regarding dakaitis that occur, it is by no means their duty to interfere in all such cases, nor can the Department be in any way held responsible for the results obtained. Their duty is to arrest *registered* dakaitis, and it is only under exceptional circumstances that it would be their duty to interfere with other offenders. They are, in fact, a sort of Imperial police, the shadow of the Paramount Power, not overriding the Government of the Native States, but aiding it and supplementing it where it cannot properly act."

§ 531. With the object of securing greater harmony between the Thagi Department and the Political Department, the Viceroy,<sup>17</sup> Lord Lytton, in 1877 appointed a Committee consisting of Mr. Aitchison, General Daly, Mr. A. C.

Lyall, and Major Bradford. Most of the proposals of this Committee were immediately approved,<sup>18</sup> and amongst them these two, namely :—

(1) "That the operations of the Department be principally directed only against the kind of offences with which it was originally intended to deal, *i.e.*, violent crime committed by organised bands and criminal tribes; that the Department should not be charged with the detection of all cases of thagi and dakaiti that occur in Native States, but that its principal duty should be to arrest *registered* dakaitis, etc., and to hunt down cases in which there is reason to believe that professional dakaitis, etc., are concerned.

(2) "That the sympathies and co-operation of Native States might be enlisted *by allowing the Native Courts occasionally to try prisoners arrested by the Department*, it being left to the Political Agents to exercise their discretion as to the kind of cases which should be made over for trial."

We may add that in addressing the General Superintendent of the Department on the subject of his report for 1881 the Government of India observed<sup>19</sup> that it was most important that the operations of his Department "should, in accordance with existing orders, be carefully restricted to organised crime having a scope beyond the limits of any particular State or province. Purely local crime, by whomsoever committed, should be left to the Darbars to deal with, unless, indeed, they expressly seek the aid of your officers; and even then care should be taken to avoid interfering with offences which spring out of antagonism between the Chiefs and those of their subjects who do not belong to the professionally criminal classes." In Rajputana and in Kathiawar alike there was chronic opposition of interests between the Chief and powerful subjects sometimes flaming out in open warfare, but in our day more often finding its vent in bursts of outlawry which might be described as dakaitis in the language of our law. The meaning of these orders of 1883 was that it was no part of the duty of the Thagi Department to interfere between a Chief and his Thákurs or a Chief and his Bhayad or Mulgirasias. The quarrels of lord and vassal called for other remedies, and amongst them are the Court of Vakils in Rajputana and our assumption of criminal jurisdiction and establishment of the Rajasthanik Court in Kathiawar.

§ 532. Leaving the general functions of the Department, we have next to refer to the jurisdiction exercised as a part or in consequence of its operations in Native States.

In 1874 a question arose whether the Resident and the Thagi Assistant at Baroda had jurisdiction in thagi and dakaiti cases. The Bombay Government

<sup>17</sup> Pro., Judicial A, December 1877, Nos. 2-61.

<sup>18</sup> Government of India, Foreign Department Resolution

No. 190-J., dated December 20, 1877.

<sup>19</sup> Pro., A, Judicial I, July 1883, Nos. 9-13.

were called upon for a report<sup>20</sup> with reference "to the jurisdiction exercised by Political Officers in similar cases in other parts of India." The Bombay Government held that no jurisdiction had "been conveyed to the Resident at Baroda by the Native Government, as in other parts of India, for the trial of such cases." The Government of India replied<sup>1</sup> on May 7, 1875:—"It is now clear to His Excellency in Council that the Thagi and Dakaiti Department has no judicial jurisdiction within the Baroda State. Such jurisdiction could only be obtained by voluntary cession on the part of the Darbar." The Gaekwar had just been deposed (see paragraph § 282 above), so nothing was done at the moment. In 1877, however, the question was elaborately dealt with after a good deal of correspondence.<sup>2</sup> "The Darbar," said the Government of India, "having now assented to the exercise by British Political Officers of the requisite judicial jurisdiction within Baroda territory, His Excellency in Council considers that the following arrangements should be carried into effect. First, it will be necessary to name the officers by whom inquiries and trials into cases affecting registered thags and dakaitis should be conducted. Accordingly, the Governor-General in Council is pleased to confer upon your Assistant, who is also an Extra Assistant to the General Superintendent, power to investigate charges against registered thags and dakaitis and to commit them for trial before you. His Excellency in Council also empowers you to try thags and dakaitis so committed, and to pass upon them such sentences as the Indian Penal Code may authorise. Secondly, it is necessary to determine in what classes of cases it will be desirable for you and your Assistant to exercise the jurisdiction hereby conferred upon you. In other Native States in which the jurisdiction of British officers in regard to the crimes of thagi and dakaiti has been admitted such jurisdiction is commonly exercised in the following cases:—(1) When a subject of a Native State is arrested in the limits of that State for thagi and dakaiti committed elsewhere. (2) When any person, whether a subject of the State or not, is arrested within that State for thagi or dakaiti committed within it. His Excellency in Council considers that you and your Assistant should exercise similar jurisdiction within Baroda territory." Several further points of detail were simultaneously settled, but we need not pursue the matter. The Sub-Agency of the Thagi Department was withdrawn from Baroda in 1883.

§ 533. The thagi jurisdiction at Hyderabad was put on a sanctioned footing in 1881. Changes were proposed in 1872 and 1876 which would have given persons

In Hyderabad, 1881.

convicted in thagi or dakaiti trials an appeal to the Resident. The Government of India did not agree; and Sir Richard Meade introduced a system of referring these cases for trial to the Superintendent of the Residency Bazars, with whom was associated a Native officer deputed by the Government of the Nizam. Sir Stuart Bayley in 1881 revived the question and proposed that the cases should be committed by the Assistant in the Thagi and Dakaiti Department to the First Assistant to the Resident. The Government of India, however, considered that no material change should be made. They thought it was important that the sentences should, in every case, be submitted to the Resident for confirmation, and that a fresh commission need not be issued to the Superintendent of the Bazars in each case as had been the practice. The Superintendent, they said,<sup>3</sup> "might be granted a general authority to try these cases till further orders, or the Resident might refer each case as it comes up to any one of his Assistants who may be most conveniently selected for the duty. The latter arrangement is in force in Rajputana and Central India, and appears to work sufficiently well." It is understood that the present practice is that the thagi and dakaiti cases in the Nizam's territory are tried by a tribunal styled "the Court of Commissioners for Thagi trials," which is composed of the First Assistant to the Resident and a Judge from a Court of the Nizam. The finding<sup>4</sup> of the Commissioner is subject to confirmation by the Resident. This practice appears to be in accordance with orders passed in 1889. When the Government of India directed the discontinuance of sessions trials by mixed Courts in Secunderabad cases (*vide* Chimnabi's case in paragraph § 471), they remarked that the thagi trials had no connection with the Cantonment. "In the trials of such cases," they said, "a representative of the Hyderabad State

<sup>20</sup> Pro., Judicial A, September 1874, Nos. 1-2.

<sup>1</sup> Pro., Judicial A, May 1875, Nos. 24-29.

<sup>2</sup> Pro., Judicial A, February 1878, Nos. 5-8.

<sup>3</sup> Pro., Judicial A, October 1881, Nos. 4-6.

Office note of Thagi Department, dated November 16, 1894.

may very properly be associated with your First Assistant; and the Government of India in 1887 passed orders which practically recognised the system of joint trials." It is, however, now considered very desirable that the First Assistant should be relieved of this work; and the Government of India have inquired whether the Judicial Commissioner of Berar or some other judicial officer could not hold periodical sessions for its disposal.<sup>5</sup>

§ 534. In Rajputana it is usual for cases in which a prosecution has been

In Rajputana.

instituted by the Thagi and Dakaiti Department to be tried by the Courts of

Vakils. In 1892 the rules relating to the Courts of Vakils were amended so as to permit an appeal against an acquittal in any of these cases to the Court of the Governor-General's Agent.<sup>6</sup>

§ 535. As regards Central India, in 1887 the Government of India ruled<sup>7</sup>

In Central India.

that the Thagi and Dakaiti cases "should in future be committed to the Court of the

Agent to the Governor-General, who will be at liberty to direct one of his Assistants to hold the trials and submit the proceedings to him for confirmation. The designations 'High Court' and 'Sessions Judge' or 'Sessions Court' will not be used in connection with these trials." It has lately been reported<sup>8</sup> that the cases are now usually tried by the First Assistant to the Agent to the Governor-General with the aid of assessors, the verdict being subject to confirmation by the Agent. It appears, however, that—quite in accordance with the orders of 1877—these cases are not infrequently tried by the State Courts. Thus Major Meade, Political Agent, Bhopal, writing on October 7, 1892, says:—"At present the larger States try their own criminals, but registered dakaitis who have received numbers from the Department are sent to the head-quarters of the Administration for trial in the Court of the Agent to the Governor-General. The Political Agent also tries in his Court cases of serious dakaiti, where murder has been committed, which have occurred in the smaller States, or where from any particular reason it seems advisable that the case should be tried by himself, even though it (the crime) took place within the limits of one of the large States. The practice is for ordinary cases to be tried by the States, and even the smaller ones dispose of their dakaiti cases unless they come under instances noted above." Colonel Biddulph, Resident at Gwalior, writing on October 9, 1892, points out that it must not be assumed that all cases prosecuted by the Thagi Department in Central India are tried by Political Officers.<sup>9</sup> "In Gwalior," he says, "this is not the case. Subjects of other States and of guaranteed Chiefs committing dakaitis in Gwalior territory are tried by the Resident, but Gwalior subjects prosecuted by the Department for dakaiti committed in Gwalior territory are tried by the State Courts."

§ 536. In addition to the jurisdiction above described, the British Government through the officers of the Department exercises in State territory certain powers of pursuit and arrest of supposed thags and dakaitis. Describing the practice

Powers of pursuit and arrest exercised of the Department in 1864, Colonel Hervey in State territory by officers of the Thagi writes<sup>10</sup> that robbers and assassins "are Department. pursued in foreign States by agents of the

Paramount Power accredited to the Native Governments. These agents are empowered by such States, by means of written mandates, to pursue and to arrest the fugitives, and are accompanied for the purpose by the officers thereof. The persons arrested are tried by Courts which are assembled under the authority of the local Chiefs, upon which persons appointed by them sit and preside."

On February 12, 1887, the Agent to the Governor-General, Central India, issued a circular calling attention to one of the rules for the guidance of arresting parties of the Department. The rule in question stood thus:—

"You will receive from the Assistant General Superintendent, or other responsible officer, a *parwana* authorising the passage of yourself and party through any States it is necessary for you to visit, as also instructions as to the route to be traversed, forms for reporting the arrest of a prisoner, and a list

<sup>5</sup> Pro., Internal A, October 1892, Nos. 142-148. Government of India, Foreign Department, No. 2136-I., dated May 18, 1897. Pro., Internal A, March 1895, No. 304.

<sup>6</sup> Office note of Thagi Department, dated November 18, 1894. Pro., Internal A, November 1892, Nos. 111-114.

<sup>7</sup> Pro., Internal A, October 1887, Nos. 253-259.

<sup>8</sup> Office note of Thagi Department, dated November 16, 1894.

<sup>9</sup> These two passages are from Pro., Internal A, August 1893, Nos. 126-144.

<sup>10</sup> Para. 54 of his No. 247, dated April 21, 1864.



(also in vernacular) of criminals whose names are borne on the general register of the Department, and these men, if met with, it will be your duty to arrest. You are strictly forbidden to arrest others except in the case of hot pursuit, unquestionable information of a condemnatory nature, or when unnumbered men of the same caste or tribe are found at a distance from their homes and in the actual company of those persons you are seeking for."

The circular quoted this rule and asserted that officers of the Thagi Department not infrequently encroach upon the legitimate duties of the police in Native States. "You will not," said the Agent to the Governor-General, "encourage them to do the work of the Chiefs in hunting down unregistered dakaitis, a duty which we must insist upon the Native Darbars performing themselves." The General Superintendent of the Department took exception to this circular, but the Government of India declined to direct its withdrawal.<sup>11</sup> In the rules lately issued in a tentative form it is declared that "the practice of sending out departmental arresting parties into Native States shall be discouraged; and for making arrests Political Officers shall utilise the police of the several Darbars to the greatest possible extent." But, in the event of the State authorities failing within a reasonable time to produce a person wanted, an arresting party may be despatched if the Political Officer thinks fit; and in that case strict rules are laid down for the guidance of the party, including the requirement of an order in writing authorising its passage through State territory and calling upon the State officials to render aid.<sup>12</sup>

§ 537. Some light is thrown upon the jurisdiction of the British Government in respect to the pursuit, arrest, and trial of thags and dakaitis in State territory by the provisions of certain repealed enactments and of the present criminal law. Act XXX of 1836<sup>13</sup> imposed the penalty of imprisonment for life with hard labour upon any person proved to have belonged to any gang of thags *either within or without the territories of the East India Company*; and Act XXIV of 1843<sup>14</sup> used exactly the same expression in providing penalties for any person proved to have belonged to a gang of dakaitis. Act XVIII of 1843<sup>15</sup> authorised the detention in British jails of persons convicted of thagi or dakaiti "within the territories of any Native Prince or State in alliance with the Company; provided that the sentence had been pronounced after trial before a tribunal, in which a covenanted servant of the East India Company, *duly authorised in that behalf by such Prince or State*," was "one of the presiding Judges." To quote a note by Mr. Harvey James,<sup>16</sup> Act XVIII of 1843 "was repealed by Act VIII of 1863 and re-enacted in section 4 of that Act, with this addition, that its provisions were applied not only to prisoners sentenced for thagi and dakaiti or belonging to a gang of thags or dakaitis, but also to prisoners sentenced for participation in the offence of *sati or samadh*, or for any other offence which the Governor-General in Council might thereafter by notification prescribe. Section 19 of Act V of 1871" (*i.e.*, the present law in the Prisoners Act) "is a reproduction, with modifications, of section 4, Act VIII of 1863, and of the notifications published under that section."

§ 538. The Indian Penal Code provides—

"310. Whoever at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing, by means of or accompanied with murder, is a thag.

Provisions of the present law.

"311. Whoever is a thag shall be punished with transportation for life, and shall also be liable to fine.

"400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dakaiti, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Under section 181 of the Code of Criminal Procedure the offences of being a thag, of being a thag and committing murder, of dakaiti, of dakaiti with

<sup>11</sup> Pro., Internal A, September 1867, Nos. 112-122.

<sup>12</sup> Rules, 241-250.

<sup>13</sup> Repealed by Act XVII of 1862.

<sup>14</sup> Repealed by Act VIII of 1863.

<sup>15</sup> Pro., Internal A, August 1890, Nos. 185-187.

A reference to this note and a description of the relevant provisions of the Prisoners Act, No. V of 1871, will be found in para. § 494 above (see foot-note).

murder, or of having belonged to a gang of dakaits, "may be inquired into or tried by a Court within the local limits of whose jurisdiction the accused person is."

§ 539. A re-organisation of the Thagi Department was sanctioned by the Secretary of State on October 26, 1893, subject to two leading conditions,<sup>16</sup> namely, that (1) the authority of the Darbars must not be impaired in regard to the suppression of ordinary crime within their respective States; and that (2) the position and powers of Political Officers must be upheld. "I recognise," said Lord Kimberley, "that all States have a serious difficulty in dealing with

Re-organisation of the Department sanctioned by the Secretary of State in 1893. organised crime committed by the subjects of alien States, that some of the smaller States are incompetent to deal with organised crime even when committed by their own subjects, and that even in the better governed States the assistance of the Paramount Power may frequently be necessary to deal with special outbursts of this class of crime." But the new scheme was not without dangers of undue interference, of jealousy on the part of the States, or of the States assuming that they were relieved of their own essential duties as to the suppression of organised crime. The Secretary of State gathered that the head of the Department, Dr. Lethbridge, intended the work of the departmental staff and of the Political Agents to be restricted, in regard to the larger and better organised States, to dealing with crime committed by the subjects of alien States, and that the trial in these States would be conducted by the local judicial authorities. "I think," His Lordship continued, "if these principles receive a permanent place in the rules<sup>17</sup> which your Government are drawing up, and if, in addition, a wide discretion is left to the Political Agents regarding their interference, and the departmental staff, instead of being distributed at the outset among all the States, is concentrated mainly in those which have shown themselves incompetent hitherto to deal with organised crime, the effect will be to considerably lessen the dangers which I have indicated above."

§ 540. The information given above on the subject of the Thagi and Dakaiti Department may now be summarised:—

Summary.

(1) *The Thagi and Dakaiti Department is not concerned with local crime, but with organised crime, and usually with crime committed by robber bands or criminal tribes in more States than one, or by these bands or tribes or by other persons not being subjects of the State where the offences occur.*

(2) *The operations of the Department must be so conducted as to maintain the powers and position of Political Officers, and not to impair the authority of the Darbars in regard to the suppression of ordinary crime within their respective territories.*

(3) *Jurisdiction for the trial of thags and dakaits prosecuted by the Department has been variously arranged in different parts of the country. In Baroda it has been conferred upon the Resident; in Hyderabad there is a mixed Court; in Rajputana the cases are often tried by the Court of Vakils; and in Central India by the First Assistant to the Agent to the Governor-General with the aid of assessors. It appears, however, that in some of the larger States the State Courts exercise concurrent jurisdiction.*

(4) *Officers of the Department provided with written authority from a Darbar may arrest in State territory offenders whose names are borne on the general register of the Department. They may not arrest other persons, except in hot pursuit, or on unquestionable information of a condemnatory character, or when men of the same caste or tribe as registered offenders are found in the company of these offenders and at a distance from their homes.*

(5) *It is intended that the despatch of arresting parties shall be discouraged and that State police shall be utilised as much as possible for arrests made in consequence of the operations of the Department.*

<sup>16</sup> Pro. Internal A, July 1894, Nos. 232-244.

<sup>17</sup> As a tentative measure the Government of India has sanctioned the issue of the Rules subject to such alterations

as experience may show to be necessary or desirable. Pro. Internal A, May 1895, Nos. 237-254.

## CHAPTER XVI.

### EXTRADITION BETWEEN BRITISH INDIA AND FOREIGN OR NATIVE STATES.

§ 541. In this work an exhaustive treatise on extradition to and from British India and the Native States and to and from the British Indian Empire and the territories of Foreign powers would be quite out of place for several reasons. Such a treatise would comprise an enormous amount of detail and extend to a length incommensurate with the relative importance of extradition in the general scheme of the relations which actually exist between the Paramount Power and its Feudatories. Moreover, if space and the relative importance of the subject admitted of its being fully treated here, there would be grave objections to any attempt to make the treatment exhaustive. Some important points have no doubt been settled by the Extradition Act and the rules framed under it and by various trains of correspondence. But many points are still unsettled and many matters included under the head of extradition, or closely connected with it, are certainly not as yet fit subjects for general rules. The fact is that the arrangements made or to be made in common by British and State authorities for the suppression of crime in British and State territory have not by any means reached their full development; and for anyone regarding the Indian system of extradition as a part of these arrangements, it is easy to see that at present the system is in an imperfect stage of growth. To endeavour to formulate the rules and principles of the system in detail and with precision might now rather hamper progress than promote it.<sup>1</sup>

At the same time there is so much political business which falls under the description of extradition that it is undesirable to omit the subject. We therefore propose to reproduce a general sketch of the existing system which was put on record by the Government of India eleven years ago; and to supply such comments upon that sketch as may add to its utility and serve to bring it up to date.

§ 542. In April 1884 the Government of the Straits Settlements asked the Government of India for information regarding the extradition of criminals from British India to independent or protected Native States. The Government of India replied<sup>2</sup> on July 2, 1884, in the following terms:—

“2. The question is much complicated by the various degrees of sovereignty possessed by the States allied with, or subordinate to, the British Government, and by the different status of the subjects of Her Majesty who form the population of British India. But a few principles have obtained general observance, which it may be useful to indicate, as they will serve to explain the chief provisions of the existing law.

“3. The States with which the Government of India has to deal fall into three classes—Foreign States, Native States of the first grade, which, being in subordinate alliance, still retain a considerable measure of sovereignty; and the larger group of inferior feudatory or tributary States. The principle regulating extradition with the first class, such as the frontier States of Nepal and Burma, over which the British Government claims no supremacy, is the principle of reciprocity. It is generally stipulated that neither Government is bound to deliver up its own subjects, but only the subjects of the Government

<sup>1</sup> Some further cogent reasons against attempting to treat the subject of extradition exhaustively will be found in a note by Mr. Fitzpatrick, dated April 3, 1884, recorded in the case of Naja Ali—Pro. A, Judicial I, April 1884, Nos. 19-24.

<sup>2</sup> Pro. A, Judicial I, July 1884, Nos. 1-2.

making the demand. The procedure regulating extradition in these cases is laid down in treaties.

“4. Within the limits of India, there are some Native States with which the Government of India has, in former times, concluded treaties of extradition; but it may be added that *the general subordination of the internal Native States to the British Government further gives the Government of India power to demand the extradition of any person, if it is considered necessary to make the demand as an act of State. The policy of the Government in the present day is opposed to the conclusion of extradition agreements with Native States in India*, and in only one case has the principle of reciprocity been admitted. Where such treaties exist, the crimes for which, and the conditions on which, an offender against the law of the Native State shall be surrendered have been laid down in the articles of the treaty or in rules framed under it.

“5. The great bulk of Indian Native States have no extradition treaties; and the procedure of extradition to them has been defined by the legislature in Act XXI of 1879, of which a copy is enclosed. Nor is this procedure confined to the States which have no extradition treaties. The enactment does not supersede the treaties, as a reference to section 14<sup>3</sup> will show you, but it provides in section 11 a mode of procedure, so much more prompt and liberal than that which is contained in the provisions of any treaty, that it is appealed to even by those States which have a special extradition agreement. A Native State possessing a treaty is required to elect either for the process laid down in its treaty, or for that prescribed by the law.<sup>4</sup> It is not at liberty to pick and choose between the two modes of satisfying a particular demand for surrender. It must either consistently abide by the treaty, or adopt the procedure prescribed by Act XXI of 1879 with the conditions attached. Practically, the Act is superseding the absolute methods provided for by the treaties.

“6. It remains to consider the distinctions between the various classes of subjects whose extradition may be demanded whether under the law or under the terms of a treaty by the Native States. From this part of the inquiry it is convenient to eliminate the first class of States described in paragraph 3. With the independent States beyond the frontier line, the question of extradition becomes an affair of international law, and is regulated by the interpretation of our treaties and by the ordinary rules for meeting the demands of foreign powers. Within the limits, however, of British India, a distinction is recognised between European British subjects, Native British subjects, and persons not British subjects, being subjects of the State which makes the demand for extradition.

“7. European British subjects within the Native States of India in alliance with Her Majesty are amenable to British Indian Courts and British Indian law—see for present law 28 Vic., c. 15, s. 3, and Act XXI of 1879, ss. 9 and 10.<sup>5</sup> Theoretically, every independent State has a right to deal according to its own laws with any persons resident within its jurisdiction. But this right has never been admitted as inherent in any Native State within India. The right of ex-territoriality belongs to every European British subject in the Feudatory Native States of India; and as such subjects are amenable to the courts of British India for offences committed by them in Native States, no question of extradition arises. Act II of 1869 is repealed, and anyhow we are speaking of extradition to a Native State which assumes the European British subject to be in British territory.

“8. As regards Native British subjects the Extradition Acts make no legal distinction between them and the subjects of Native States. Under the present law, native subjects of Her Majesty, whether servants of the Crown or not, beyond the limits of British India, and whether within States in alliance with Her Majesty or elsewhere, are subject to all laws heretofore passed by the Governor-General in Council regarding them. In connection with the subject, I may invite your attention to the extradition rules, dated 12th March 1875, of which a copy is enclosed, together with a copy of the revised

<sup>3</sup> See section 1 of the present Act, Appendix D. Section 14 now merely provides a procedure which may be followed if consistent with the treaty. As regards the change in the law see paragraph § 553.

<sup>4</sup> This was the original intention, but there are legal difficulties. See below, paragraphs § 547 and § 549.

<sup>5</sup> These sections have been repealed. See below, paragraph § 551.

rule No. 5, which was issued on the 16th August 1876. It will be observed that in rules 5 and 6 an exception is made in favour of British subjects, who, by custom or recognition, are exempt from trial in the courts of Native States. This word 'custom' covers indefinite cases, and was deliberately used in order to avoid raising the general question of the rights of Native States to try Native British subjects. Where the power is given by treaty, no difficulty can arise. When surrender is demanded under the Act XXI of 1879, Chapter IV of that Act gives the Political Agent a discretionary power to refuse extradition and to dispose of the case himself. The general custom in the absence of treaty provision to the contrary has been for Political Agents to retain jurisdiction in all cases in which the accused are servants of the British Government, or servants of the Political Agent, or of any officer of Government officially employed within the State.

"9. Turning now to the demands of Native States for the surrender of their own subjects, or of the subjects of neighbouring States, who have escaped beyond the jurisdiction of the State making the demand, the practice is to grant extradition either in accordance with the terms of the treaty, or in accordance with the law. The Act of 1879 takes proper securities that an offender is not given up for a merely political offence, that the offence is sufficiently heinous, and that a *prima facie* case is made out."

"10. With these remarks, I am directed to forward to you the enclosures as noted in the margin. I have only to add that the Rules of 1875 were made under the provisions of sections 13 and 15 of Act XI of 1872, but are continued under the operation of

section 2 of Act XXI of 1879; a copy of the earlier Act is forwarded for your information. The rules have been found to work well in practice, and accordingly it has not been found necessary to supersede them by others."

Act XI of 1872.  
Act XXI of 1879.  
The Rules of 1875.  
Amended Rule 5 of 1876.

Act XXI of 1879, the Foreign Jurisdiction and Extradition Act and the rules made under it, which are still in force, are added to this Volume as an Appendix for convenience of reference.<sup>7</sup> Any comments which may be necessary on the Act and rules will be made towards the close of this Chapter. The Act of 1879 repealed the Act of 1872 mentioned in the last paragraph of the above-quoted letter of the Government of India.

§ 543. Taking in order the various topics noticed in that letter, we have to

Extradition arrangements with Foreign States.	remark first upon extradition arrangements with Foreign States, that is, with States other than the States of the internal protectorate. Since the annexation of Upper Burma one of the States mentioned by the Government of India in 1884 as a frontier State has ceased to exist. There is no extradition treaty with Afghanistan. In 1884 the Amir demanded the extradition of Mirza Baiza, his postmaster, who was charged with embezzlement supposed to have been committed in Peshawar. The Government of India pointed out that the Extradition Act does not apply to offences committed by Afghan subjects in British territory, and extradition was refused. <sup>8</sup> In 1885 when the Amir asked for the extradition of three men accused of having committed a murder in Kandahar <sup>9</sup> and believed to be in Baluchistan, the Honourable C. P. Ilbert noted that there was no law applicable to the case, but that the analogy of the Extradition Act should be followed. The Government of India were prepared to surrender the men if there was no reasonable doubt of their guilt and if they were Afghan subjects; but it did not appear that the place where the men were supposed to be was in British India. Not long afterwards an Afghan official, with the consent or subsequent approval of the Governor of Kandahar, seized in British territory and carried off seven Achakzais, British subjects, who were said to have sheltered Afghan refugees. <sup>10</sup> Sir A. Scoble, the Law Member of Council, wrote—"I agree with Mr. Ilbert's note of 16th December 1885 that the analogy of proceedings under the Extradition Act should
-----------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<sup>7</sup> These securities are taken partly by the Act and partly by the rules framed under it.  
<sup>8</sup> *Vide* Appendix D.

<sup>9</sup> *Pro., Frontier A*, Feb. 1885, Nos. 71-92.  
" " July " " 27-68.  
" " Mar. 1886, " " 68-70.

<sup>10</sup> *Pro., Frontier A*, May 1886, Nos. 1-10.  
<sup>11</sup> *Pro., Secret F*, Feb. 1887, Nos. 344-364.

be followed, but I would construe the Act very strictly *in favorem libertatis*. As regards British subjects, I would instruct the Political Agent to dispose of every case himself under section 13 of the Act unless he felt bound to report the case for special orders of the Governor-General in Council. As regards Afghan subjects, I would not extradite them except upon the clearest evidence that an offence involving extradition had been actually committed by the person charged, and ought to be inquired into in Afghanistan rather than disposed of by the Political Agent. I would not extradite in any case in which an offence was only supposed to have been committed." On the application of the Amir two Afghan officials, Abdur Rashid and Sher Ali, were arrested in British territory<sup>11</sup> in July 1893 on the ground that His Highness suspected them of having committed in Afghanistan an offence which would, in British India, have amounted to criminal breach of trust. Sir Alexander Miller, Law Member of Council, remarked—"In the absence of an Extradition Treaty no Foreign State can require us to deliver up its fugitives from justice, but we are not bound to afford them an asylum, and when the act with which they are charged would be an offence against our laws if committed in British India, it is in accordance with the comity of nations to deliver them up." The men gave up some ornaments, etc., which they said belonged to the Amir, and these articles were forwarded to His Highness, who was informed that if they were not prosecuted in a British Criminal Court within one month they would be released. No case has been traced in which extradition to Afghanistan has been actually granted. On the other hand, in 1890, when one Muhammad Ibrahim, a contractor, and his wife, were murdered at Spinawana in the Pishin District, and the eight Afghans believed to have committed the murders had fled to Afghan territory, the Government of India instructed the Agent to the Governor-General in Baluchistan that the extradition of these men could not be claimed as of right, because there is no extradition treaty with the Amir. "There is, however," they said,<sup>12</sup> "no objection to your writing direct to the Governor of Kandahar, transmitting a statement of the evidence in the case, and asking, as the principal civil officer in Baluchistan, and on the ground of international friendship and courtesy, for his assistance in inquiring into the case, and either for the arrest and extradition to Chaman of the men accused of the crime, if found, or for their due punishment in Afghanistan, if they should be arrested and the crime is, in the Governor's opinion, proved against them."

§ 544. Some correspondence of 1888 connected with Nepal affairs affords a precedent against the surrender of political offenders and shows that in certain circumstances the Government of India will be disposed to construe their extradition obligations very strictly. On the other hand, two or three cases may be mentioned in which the Government of India have gone beyond what they were bound to do by the letter of treaties in order to facilitate extradition at the request of the Nepal Darbar.

In 1877 Sir Ranudip Singh succeeded his elder brother, Sir Jung Bahadur as Prime Minister of Nepal. In November 1885 the sons of Sir Jung Bahadur's youngest brother, Dhir Shamsher, then deceased, rose against Sir Ranudip Singh and put him to death. Bir Shamsher, the eldest son of Dhir Shamsher, assumed the post of Minister, and the Government of India recognised the *de facto* administration. Many of the party of Sir Ranudip Singh took refuge in the British Residency and eventually in British India. In December 1887, an attack instigated by some of these refugees was made upon the Hanumannagar Cutcherry and other places in Nepalese territory, one party being led by a grandson of Sir Jung Bahadur. More than a thousand people from the Patna

The attack upon Hanumannagar, 1887. and Bhagalpur Divisions were said to have been implicated in these disturbances and the bands, after some plundering and violence, returned to British territory. The Nepal Darbar pressed for the surrender in a wholesale way of persons charged with complicity in this affair. The Resident was unable to recommend that extradition should be granted, partly because the offences charged had a political character, and partly because he thought the opponents of the Darbar, as on previous occasions, might be exposed to torture and other severities.

<sup>11</sup> Pro., Frontier A, November 1893, Nos. 1-29.

| <sup>12</sup> Pro., Frontier A, November 1890, Nos. 82-92.

“Important Sardars,” he said, “would probably be subjected to the usual Nepalese torture of long exposure to the sun, dripping of water on their heads for hours at a time, and repeated stabs with knife-ends all over their body; and to imprisonment of such a rigorous kind that death would be preferable.” At an interview he informed the Nepal Minister point-blank that the British Government never surrenders “political prisoners.” The instructions of the Government of India to the Resident were that they would not surrender the refugees, but would, as far as possible, prevent them from using British territory as a base of military operations.

But before these orders had issued an application was made by the Nepal Darbar which raised fresh points. In the attack upon Hanumannagar the jail was broken open and some of the released prisoners joined the refugees and took part in the plundering. The Nepal Darbar applied for the extradition of five of the released prisoners. As regards four of these men the Resident gave a very strong hint that if surrendered they would not have much chance of life. The Government of India ignored the possible complicity of the men in the political disturbances, which were in effect an attempt to raise a revolt against the existing Government in Nepal, and dealt with the case on the basis of the Nepal Extradition Treaty of 1855 as amended in 1866 and 1881. The treaty so amended requires the extradition of Nepal subjects who have escaped from custody whilst under punishment, after conviction, for anything which is already by the treaty an extradition offence. Of the five persons, one, Ali Bakhsh, was charged with adultery. That is not an extradition offence, and it was ruled that he should not be surrendered. Another, Zahuri, charged with cattle-theft, was a British subject. There was therefore no obligation to surrender him, but the Government of India had no objection to his being tried in British India subject to the provisions of section 188 of the Criminal Procedure Code. A third, Ditha Kalu, was charged with murder. He was discharged because evidence was not produced within two months of the date of his arrest in British India upon which a warrant or order could be issued against him as required by the Act. The Government of India considered that this discharge should operate as a bar to further proceedings. As to the other two men, Gangai and Punian, charged respectively with serious theft and murder, the Government of India directed an inquiry to be held in accordance with section 14 of the Act. These orders were addressed to the Government of Bengal. To the Resident the Government of India said<sup>13</sup> that “having regard to the peculiar circumstances under which the escape was effected, and in view of the probable consequences of surrender in the present case, the Government of India feels justified in construing its extradition obligations in the strictest possible manner.”

§ 545. But on at least two occasions, one before and one after the events of 1888, the Government of India were prepared to make or actually sanctioned a surrender which it was not bound by treaty to make to Nepal. In 1881 application was made for the extradition of certain Nepalese officials charged with having taken bribes. The Act authorises the Political Agent to issue a warrant in the case of certain scheduled offences of which bribery is not one. Nor is the

Nepalese officials charged with bribery, 1881.

taking of a bribe an extradition offence under the treaty. Section 14 of the Act, however, permits action to be taken on a requisition made by, or by the authority of, the persons for the time being administering the territory of any Foreign State. The Government of India ruled<sup>14</sup> that a requisition for the surrender of persons charged with having accepted bribes could “properly be made under the provisions of section 14, in which the word ‘offence’ is not limited to those designated in the schedule,” and added that “although bribery is not included in the Extradition Treaty, and is not therefore an offence for which surrender is compulsory, it may, notwithstanding, involve serious criminality, and it will therefore be a question to be decided on the merits of each particular case after full inquiry, whether the offence charged is of a sufficiently grave character to justify extradition of the accused persons independently of the treaty, or whether there are any special circumstances which would render extradition inadvisable or undesirable.”

<sup>13</sup> Pro., Secret E, July 1888, Nos. 47-125. Atchison, II, pages 160-161, 188-190.

<sup>14</sup> Pro., Political A, October 1881, Nos. 859-872.

§ 546. In 1891, Muhammad Ali, a British subject in the employ of the Nepal State, when on duty as a watchman in the Nepalganj Jail, set free eight prisoners, wounded a fellow-watchman to facilitate their escape and absconded to British territory. It did not appear that the offence of Muhammad Ali amounted to an extradition offence under the Extradition treaty with Nepal; and in any case, as he was a British subject, the British Government was not bound to surrender him. But after some correspondence the Government of India agreed, as a special case, to his being surrendered, when found, subject to the condition that the Resident in Nepal would watch his trial and see that no excessive punishment was inflicted on him.<sup>15</sup>

The conclusion suggested by all of these Nepal cases read together is that the action of Government in granting or refusing extradition must be guided to a great extent by political considerations, the expediency of the time and the facts of each case; and that extradition precedents must be regarded rather as so much recorded experience than as the vehicle of general and obligatory rules.

§ 547. In paragraph § 32 we have already noted the application of the Nepal Darbar for the extradition of two subjects of the Rampur State, the case of Sankara Reddy, 1889, and the draft Convention with Portugal; and we have shown that when a Foreign State is entitled to demand extradition of an offender from British Indian territory, it is entitled to make the same demand in regard to offenders resident in the dominions of Native Princes and States in India, for whose political relations with Foreign powers the Government of India are responsible. The procedure which should be followed in the extradition of offenders from British India to the French Settlements in India has been clearly laid down by the Secretary of State in the case of Pir Bakhsh, accused of the murder at Chandernagore of a girl who was his mistress. "The practical question at issue," said the Secretary of State in a despatch of February 14, 1884, "is whether the procedure in such cases should be regulated by the stipulations of article IX of the treaty of 7th March 1815, between Great Britain and France, which relates exclusively to the Indian possessions of the two countries, and under which persons accused of non-political offences of a grave character have, up to this time, been surrendered upon application supported by a warrant and summary of the charges, no depositions of witnesses being required, or whether it is necessary to observe the more stringent provisions of section 14 of the Indian Extradition Act of 1879 and sections 3 and 10 of Act 33 & 34 Vic., cap. 52, relating to extradition." The operation of article IX of the treaty of 1815 was saved by another treaty of August 14, 1876, which was in force when the English statute was applied to our relations with France; in this way the English statute was held not to affect the case, so it is not necessary to notice it further. As regards the Indian Act of 1879, the Secretary of State observed that "by the first section it is enacted that nothing therein shall affect the provisions of any law or treaty in force as to extradition of offenders, and that the procedure provided by any such law or treaty shall be followed in every case to which it applies." Accordingly the Secretary of State ruled that extradition between the French Settlements and British India depends solely upon article IX of the treaty of 1815, and that the procedure observed up to 1884, in accordance with which Pir Bakhsh had been surrendered to the French authorities, should be continued.<sup>16</sup>

<sup>15</sup> Pro., External A, October 1891, Nos. 3-5.

Pro., External B, January 1892, Nos. 19-20.

Pro., External A, June 1892, Nos. 224-226.

There are other papers which may be referred to if it is at any time necessary to go more fully into the question of extradition to Nepal. In 1891 it was directed that one Dwarka, a British subject, who had escaped from prison in Nepal, might, as a special case, be surrendered to undergo the remainder of the original sentence passed on him for theft by the Nepalese Courts, because there were legal difficulties about trying him in British India for breaking jail in Nepal. In the same correspondence it was declared that there is no law by which a British subject escaping from a Nepalese jail into British India can be confined in India for the unexpired portion of his sentence, or can be retried and reconvicted in India upon the charge upon which he was originally convicted in Nepal. Pro., External A, June 1891, Nos. 1-3; and August 1891, Nos. 206-217. The extradition offence of "murder" does not include culpable homicide not amounting to murder. Pro., Political A, May 1880, Nos. 109-112. The papers relating to the amendment of the treaty effected in 1881 to provide for the extradition in certain cases of escaped convicts are in Pro. A, Political I, October 1882, Nos. 69-70; Pro., Political A, March 1881, Nos. 118-121; Pro., Political A, May 1880, Nos. 138-142; and Pro., Political A, November 1879, Nos. 810-812.

<sup>16</sup> Pro. A, Judicial I, June 1884, Nos. 14-16.



In 1893, however, the questions were raised whether in fact article IX of the treaty of 1815 does provide any "procedure" within the meaning of the first section of the Act of 1879, and therefore whether the practice above described rests upon any legal basis. The Secretary of State held that the term "procedure" might well be understood as meaning, in the case of a treaty, the proceedings to be taken, the things to be done, according to its terms. "On this construction," he said, "the section would seem to be a sufficient legislative enactment that the treaty of 1815 is to be acted upon, and that accused persons against whom proceedings are shown to have been instituted are to be given up in the cases, and subject to the conditions provided for in the treaty. If so, the Governments in India, and any officer to whom the duty is entrusted by his Government already have sufficient warrant for carrying out the treaty in accordance with the existing practice. I request that Your Lordship will issue orders that this view should be acted upon, unless and until it be judicially determined to be unscund, and that, if occasion should arise, it may be supported by argument before the High Courts of Judicature." The Governments of Madras and Bengal were instructed accordingly.\*

§ 548. In paragraphs § 150 to § 156 inclusive we have gone fully into the question of the extradition of deserters as between British India and the Native States. We may here add a leading case relating to a deserter from an Austrian man-of-war. In 1886 a man named Stanislas Pole, who had deserted

The case of Pole, a deserter from the Austrian man-of-war "Aurora" was arrested at Galle and sent by the Consul for the Austro-Hungarian Empire at Colombo to Bombay on board the Austro-Hungarian Lloyd's Steamer *Thisbe*. Pole absconded from the *Thisbe* in Bombay Harbour on October 12, 1886. The Consul for the Austro-Hungarian Empire at Bombay applied for his surrender and the Acting Advocate-General, Bombay, recorded the following opinion:—

"Stanislas Pole being deserter from an Austrian man-of-war, I do not know of any authority under which he can be delivered up. The general practice of nations is to the contrary (Wheaton's International Law, pages 159-160), and the crime of desertion is not one of those included in the Extradition Acts, 1870 and 1873, or in the treaty between England and Austria signed on the 3rd December 1873. The Order in Council of 16th October 1852 only refers to deserters from merchant vessels." The Bombay Government then informed the Consul that nothing could be done in the matter. The Government of India consulted the Advocate-General in Bengal and the Standing Counsel to the Government of India. These officers agreed with the opinion accepted in Bombay. They said—"The late Lord Chief Justice and Lord Westbury, when Law Officers of the Crown, expressed their opinion that the delivering up of certain Russian man-of-war's men, who had deserted from their ship on her arrival in England, and the assistance offered by the Police for the purpose of their being conveyed back to the Russian ship, was contrary to law (see Forsyth's *Opinions on Constitutional Law*, page 468). We do not find that any alteration has been made in the law relating to desertion by foreign man-of-war's men in Her Majesty's dominions since the date of the opinion referred to, which was delivered on the 3rd of January 1854." The Government of India instructed the Government of Bombay that the orders which that Government had passed in the case of Pole might be followed in future similar cases.<sup>17</sup>

§ 549. Some comment is necessary on paragraphs 4 and 5 of the general sketch of the extradition system given in the Government of India letter of July 2, 1884, transcribed in paragraph § 542 above. Although the policy of the Government is opposed to the conclusion of extradition agreements with Native States, it has been found necessary since 1884 to supplement the existing Extradition Treaties by further engagements. Nor is it quite correct to say that a Native State possessing a treaty is required to elect either for the process laid down in its treaty, or for that prescribed by law. As we have seen from

\* Pro., Internal A, November 1893, Nos. 92-122.

June 1894, Nos. 101-104.

"Pro., Internal A, February 1887, Nos. 167-178.

For a later precedent to the same effect see the case of

the seaman, Cesare Salvucci, who deserted from the Italian cruiser "Cristoforo Colombo":—Pro., Internal A, March 1895, Nos. 166-174.

the Secretary of State's ruling in regard to extradition to the French Settlements,<sup>18</sup> a procedure prescribed by treaty must be followed to the exclusion of the procedure prescribed by the Act. The same point was taken by

The case of Seth Srichand, a Jaipur subject, 1886. Messrs. Woodroffe and Evans of the Calcutta Bar in the case of Seth Srichand

Mohatta, a Jaipur subject, who, being under trial on a charge of criminal breach of trust, absconded from Jaipur into British territory. The Resident, Eastern Rajputana States, issued a warrant, under section 11 of the Act, for the arrest of the absconder. But as pointed out in the case of Pir Bakhsh (paragraph § 547 above) nothing contained in the Act can affect the provisions of any treaty for the time being in force as to the extradition of offenders, and the procedure provided by any such treaty must be followed in every case to which it applies. Counsel therefore held that sections 11, 12 and 13 of the Act do not apply to cases in which there is a treaty specifying the offences for which extradition may be demanded and laying down the procedure to be adopted when such extradition is applied for. They then went on to say—"Between the Government of British India and the Jaipur State there is such a treaty—see Aitchison's Treaties, Vol. III, page 100. Its provisions and the procedure therein laid down are therefore to be followed in any cases falling within the scope. Criminal breach of trust and criminal misappropriation of property are amongst those enumerated in article 5 as coming within the category of the heinous offences for which extradition may be demanded, and the procedure therein laid down for procuring the extradition of a person committing these or any other of such heinous offences is a requisition by the Maharaja of Jaipur to the Government of India when the supposed offender seeks asylum in British territory. The action of the Political Agent, therefore, assuming him to have issued a warrant for the arrest of Seth Srichand in supposed pursuance of section 11 of Act XXI of 1879, is illegal, and the banker cannot be arrested thereon in, or removed from, British territory.

"If the Maharaja desires Srichand's extradition, he must proceed under the treaty by way of requisition, and on such being duly made the Governor-General in Council can, if he so please, act thereon by directing an inquiry into the truth of the accusation made therein in the manner provided by section 14 of Act XXI of 1879, under which it is imperative that the Magistrate on issuing a summons or warrant for the arrest of the accused shall inquire into the truth of such accusation and report thereon to Government, which can then issue a warrant for the accused's extradition, but is not under the treaty bound to do so, save on such evidence of criminality as according to the laws of British India would justify the apprehension of the accused and sustain the charge had the offence been committed in British India, where at all events a previous acquittal would bar a fresh trial for the same offence." The Advocate-General in Bengal and the Officiating Standing Counsel to the Government of India also held that when an extradition treaty has been made with a Native State, the procedure prescribed by the treaty must be followed to the exclusion of the procedure laid down in the Act. Extradition treaties exist with all the States of Rajputana, except Shahpura and Lawa; but since the passing of the Extradition Act of 1872, Political Agents in Rajputana had been in the habit of issuing extradition warrants against certain classes of offenders on their escape from Rajputana State territory into British territory; nor, before the occurrence of the case of Seth Srichand, had any objection been raised in any quarter to this practice. The Government of India did not contest the opinion of the Law officers, but thought there was no reason why the treaties should not be modified in order to allow the more convenient procedure of the Act to be adopted.<sup>19</sup>

Negotiations, in which the Hyderabad State was included, were accordingly set on foot; and the rest of the case is sufficiently stated in the Notification of the Government of India<sup>20</sup> in the Foreign Department, No. 1392-I., dated April 14, 1888, which is here reproduced:—

"The following supplementary agreement, modifying the provisions of

<sup>18</sup> Vide paragraph § 547 above.

<sup>19</sup> Pro., Internal A., July 1886, Nos. 336-338; and November 1886, Nos. 77-81.

<sup>20</sup> Pro., Internal A., October 1887, Nos. 19-81; and May 1888, Nos. 192-217.

the extradition treaty with the Hyderabad State, which was set out in the *Gazette of India*, dated the 1st June 1867, is published for general information :—

“Whereas a treaty relating to the extradition of offenders was concluded on the 25th May 1867 between the British Government and the Hyderabad State : And whereas the procedure prescribed by the treaty for the extradition of offenders from British India to the Hyderabad State has been found by experience to be less simple and effective than the procedure prescribed by the law as to the extradition of offenders in force in British India : It is hereby agreed between the British Government and the Hyderabad State that the provisions of the treaty prescribing a procedure for the extradition of offenders shall no longer apply to cases of extradition from British India to the Hyderabad State ; but that the procedure prescribed by the law as to the extradition of offenders for the time being in force in British India shall be followed in every such case.

Jaipur.  
Udaipur.  
Dungarpur.  
Banswara.  
Partabgarh.  
Kishangarh.  
Jodhpur.  
Jaisalmir.  
Sirohi.

Tonk.  
Bhartpur.  
Karauli.  
Dholpur.  
Bikanir.  
Alwar.  
Jhalawar.  
Kota.  
Bundi.

“2. Similar supplementary agreements have been concluded with the Rajputana States enumerated in the margin. The Extradition Treaties with these States were published in the *Gazette of India* from time to time during the years 1868, 1869 and 1870.”

§ 550. It is not difficult to see why in the case of those Native States with which extradition treaties have not been made, the present policy is opposed to the conclusion of them. In the well-known Resolution,<sup>1</sup> dated August 8, 1871, on the general subject of extradition, the Government of India said—“The British Government is in a position always to procure from these States” (*i.e.*, *the States of the internal protectorate*) “the surrender of such offenders as it may think proper to demand ; whilst all that is wanted to satisfy the reasonable demands of the subordinate States upon the British Government is, 1st, suitable laws and tribunals for the trial and punishment of British subjects who commit offences in Native States ; and 2nd, a suitable law for the surrender of subjects of Native States who take refuge in British territory. Practical remedies for existing evils can be far better provided by an alteration of our laws than by treaties.” This Resolution led to the passing of the Foreign Jurisdiction and Extradition Act of 1872, which was re-enacted with some amendments in the Act of 1879 now in force. Thus the powers of the Government of India to grant extradition from British to State territory are, in the absence of any Extradition Treaty, now sufficiently defined by law ; while on the other hand no law or treaty is required in order to enable the Government of India to demand the extradition of any person from a Native State.

In paragraph 4 of the letter of July 2, 1884 (paragraph § 542), this prerogative is founded on the general subordination of the States of the internal protectorate. The principle so far as it applies to British subjects who have committed offences in British territory and absconded to State territory was asserted in the case of Najaf Ali, 1884. This man, who was a British subject, committed lurking house trespass by night or house-breaking by night in the Moradabad District of the North-Western Provinces and fled to

Gwalior territory. The Moradabad Magistrate despatched a warrant for the arrest of Najaf Ali to the Resident at Gwalior, but the Resident declined to execute it because the section (§ 457) of the Indian Penal Code under which the surrender of the accused was requested is not entered in the schedule of the Act of 1879. The Magistrate replied that the Act relates to the surrender to Native States of offenders who have taken refuge in British territory and does not apply to the converse case of a British subject who commits an offence in British territory and takes refuge in a Native State. The Resident answered that the practice at Gwalior had been to surrender those persons only

<sup>1</sup> *Fro.*, Judicial A, August 1871, No. 24. The Resolution is No. 113-F., dated August 8, 1871.

who were charged with offences specified in the Schedule of the Act. The offence believed to have been committed by Najaf Ali was one which might fall under section 444 or section 446 of the Penal Code. The Government of India pointed out that section 457 of the Penal Code does not define any offence, but prescribes the penalty on conviction of an offence described in section 444 or 446, both of which sections are enumerated in the Schedule of the Extradition Act. "The accidental reference," they said, "to the section prescribing the penalty, rather than to the section defining the offences, need not be allowed to prejudice a demand made under the Act in question." But the main question raised in the case was really the wider one whether there was any law applicable to such a demand as that made for the surrender of Najaf Ali. On this the Government of India observed<sup>3</sup> "that *the demands which may be made upon a Native State for the extradition of a criminal accused of an offence committed in British territory, and who is a British subject, are not limited by any law.* In cases defined in the Schedule to the Extradition Act, Political Officers should not hesitate to comply with any demands made upon them; and in other cases they should use their discretion, merely referring for the orders of Government where there is any special doubt or difficulty."

§ 551. The seventh paragraph of the letter of July 2, 1884 (paragraph § 542

No extradition of European British subjects to Native States. above) requires some explanation, which may, however, be brief as we have fully described in a previous chapter the nature of British jurisdiction over European British subjects in Native States.

By section 3 of 23 & 29 Vic., Chapter XV, the Governor-General in Council is authorised to empower High Courts to exercise jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of such Princes and States, in alliance with Her Majesty as he may determine. Act II of 1869 related to the appointment and powers of Justices of the Peace both in British and State territory, and it enabled them within State territory to commit European British and Christian subjects of Her Majesty for trial according to law. That Act was repealed by Act X of 1872 (the Code of Criminal Procedure) and its place is now taken as regards British territory by the present Code of Criminal Procedure, sections 22, 23, 24, 25 and 27, and as regards State territory by section 6 of the Foreign Jurisdiction and Extradition Act. Sections 9 and 10 of that Act have been repealed, but their substance is reproduced in sections 188 and 189 of the Criminal Procedure Code. The ordinary British Indian Criminal Law extends to European British subjects in State territory in virtue of the provisions of the Indian Penal Code and of section 8 of the Act of 1879. Thus the present law is contained in—

28 & 29 Vic., Chapter XV, Section 3;

The Indian Penal Code, sections 3 and 4;

The Foreign Jurisdiction and Extradition Act, sections 6 and 8; and

The Code of Criminal Procedure, sections 188 and 189.

The result is that, by notifications issued under the powers conferred by law, original and appellate criminal jurisdiction over European British subjects of Her Majesty, being Christians and resident in State territory, has been conferred upon the various High Courts; the States have been grouped according to local convenience: committals from Hyderabad, from the Western States of Central India and from the Central Provinces States being made to the High Court at Bombay; from Garhwal, Rampur and the Bundelkhand States to the High Court of the North-Western Provinces; from the Bengal States to the High Court at Fort William; from the Madras States and Mysore to the Madras High Court, and from some Rajputana States to the Bombay High Court and other Rajputana States to the North-West High Court, respectively. Justices of the Peace have been appointed, and directions have been given that a Justice of the Peace in any notified Native State, territory or Chiefship shall commit for trial to the proper High Court. We have already explained in paragraph § 444 that European British subjects are liable under British laws for offences committed by them in State territory. It follows from all this that there is in practice no extradition of European British subjects either from or to States

<sup>3</sup> Pro. A, Judicial I, April 1884, Nos. 19-24.

of the internal protectorate. The object of extradition is to enable the State to which the supposed offender is surrendered to exercise its jurisdiction over him. The States of the internal protectorate, with the one or two exceptions in which the jurisdiction has been expressly granted to them, have no jurisdiction over European British subjects, at any rate for any offences for which extradition would be granted; and the British Government can exercise its own jurisdiction over European British subjects without the assent of any of these States. European British subjects in British territory being liable under British laws for offences committed by them in State territory, their extradition to that territory is unnecessary and need not be considered even in regard to the few States in which they could be put on their trial before any State Court whatsoever. On the other hand, if it is necessary to bring a European British subject out of State territory in order that he may be tried in British territory for any offence, wherever committed, his transfer can ordinarily be arranged by committal to a High Court.

§ 552. If, however, the question of the extradition of a European British subject from British India to a Native State or the territory of a Foreign Power should at any time arise, reference should

The case of Trumpeter Phillips, Mhow and Hyderabad, 1893.

be made to the case of Trumpeter Phillips, Mhow and Hyderabad, 1893. In June 1891 this man with three others of his regiment, the 7th Hussars, then quartered at Trimulgherry, when on a shooting expedition in the Nizam's territory, got into trouble with some villagers, who charged Phillips with having set fire to the house of a recalcitrant beater. After much correspondence and delay the case came to a point in January 1893. The Nizam's Government wished the trial to take place in Hyderabad territory. Phillips was then at Mhow, a cantonment in a Native State to which the Foreign Jurisdiction and Extradition Act had not been applied. Even if it be assumed that the Governor-General in Council could issue, under section 14 of that Act, an extradition warrant for the custody, removal and delivery of a European British subject, nothing could be done in this case under that section because it was not in force in Mhow. The Advocate-General of Bengal, indeed, held that the persons for whom a requisition can be made under that section must be taken to be persons other than European British subjects. Whether this view is correct or not was not decided. The Governor-General in Council was advised that there were no lawful means of compelling Phillips to return to Hyderabad for trial, and that the case fell within the scope of section 188 of the Code of Criminal Procedure as applied to the Cantonment of Mhow by a notification of December 24, 1891. The section, it was said, might be construed as though the references to British India were references to Mhow, and the only practicable course was to try Phillips at the place where he was found (*viz.*, at Mhow). It will be remembered that section 188 of the Code of Criminal Procedure in substance provides that when a European British subject commits an offence in State territory he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found. It was proposed to take the course indicated above to bring Phillips to trial if a *prima facie* case were made out against him at the preliminary inquiry.<sup>3</sup>

§ 553. In the letter of July 2, 1884, it is said that the Government of India has power to demand the extradition of any person from a Native State; that the Act

of 1879 is superseding the methods of extradition provided by treaties, and that in working that Act the general custom, in the absence of treaty provision to the contrary, has been for Political Agents to retain jurisdiction in all cases in which the accused are servants of the British Government, or servants of the Political Agent, or of any officer of Government officially employed within the State. We may illustrate these remarks from correspondence connected with Baroda, the Punjab generally, and Kashmir; and from the cases of the death of Balwant Rao Bute in Gwalior territory and the murder of General Azim-ud-din Khan in Rampur. In this way we shall pass in review some of the principal cases relating to the extradition of Natives of India to Native States.

<sup>3</sup> Pro., Internal A, March 1894, Nos. 173-177. In case of any discussion in the Government of India particular attention is directed to the notes by Sir Alexander Miller, dated February 11, 1893, Sir Mortimer Durand, dated March 12, 1893, and His Excellency Lord Lansdowne, dated March 14, 1893.

In the years 1876 and 1877 there was a very voluminous correspondence with the Agent to the Governor-General, Baroda, and the Government of Bombay, on the subject of extradition from and to Baroda. The main question for consideration was that of the surrender by the British authorities to the Baroda State of Native British subjects,<sup>4</sup> who, after committing offences in Baroda territory, might take refuge in British territory. By article IX of the treaty between the British Government and the Gaekwar, dated November 6, 1817, it was agreed "that offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without delay or hesitation." The Court of Directors, however, repeatedly ruled that British subjects resident in British territory ought not to be delivered up to a Native power to be tried for offences alleged to have been committed in foreign territory; and they used this language in a despatch to the Bombay Government, No. 32 of October 11, 1848, with express reference to extradition to Baroda. As to article IX of the treaty of 1817 the Court thought that the words "offenders taking refuge in the jurisdiction of either party" must have been intended to apply only to subjects of one State taking refuge in the other. It had not been the practice to surrender Native British subjects for trial in Baroda Courts; the Gaekwar himself in 1849 expressed a wish that the present system should continue; and the system of trying Native British subjects in British Courts for offences committed in Baroda territory did in fact continue till the passing of the Extradition Act of 1872. Mr. Melvill, the Agent to the Governor-General, proposed that a declaration should be made that article IX of the treaty of 1817 was still in force, but the Government of India decided otherwise. "The Governor-General in Council," they said, "thinks that such a declaration would be likely to mislead. The article is extremely general in its terms, and if literally interpreted would compel the surrender of an Englishman to the Gaekwar. The Governor-General in Council thinks that the Court of Directors interpreted the treaty truly in the year 1848. If, however, the literal meaning of the words was even in contemplation, then your historical review and the records of this office show that the article has been modified by usage. It has not been customary to surrender British subjects for trial by the Baroda Courts, and the Gaekwar himself has disclaimed any wish to try British subjects who after committing an offence in the Gaekwar's dominions might effect their escape into British territory. Moreover, article IX provides for no sort of procedure, whereas it is clear from the language of the Extradition Act that *the treaties contemplated in the 14th section are treaties in which stipulations are made for some definite procedure. A treaty without this essential cannot take the place of the other provisions of the Act. The procedure must be according to the Act and the rules which under it have the force of law.*"

Section 14 of the Act of 1872 related to requisitions for extradition as distinguished from the warrants of Political Agents, and, with one exception, was in substance identical with section 14 of the present Act. This exception was that the old section 14 contained the words—"This section shall not affect the provisions of any law or treaty for the time being in force as to the extradition of offenders, but the procedure provided by any such law or treaty shall be followed in every case to which it applies." This proviso, as we have seen in connection with the amendment of the Rajputana and Hyderabad Treaties (paragraph § 549 above), has been transferred to section 1 in the Act of 1879 and made applicable to the whole enactment.

§ 554. In the same letter (No. 116-P., dated January 23, 1877) the Government of India observed that "British authorities cannot hand over to a Native State persons entitled to the protection of British laws, except in accordance with the provisions of Act IX, 1872." It is, of course, as true now as it was when the Act of 1872 was in force that persons cannot be surrendered from British territory except in accordance with British laws, though British laws include a treaty procedure when there is one.

<sup>4</sup> The correct technical expression is "Native Indian subjects" is used in the text for the sake of brevity, subjects of Her Majesty." The term "Native British

For the reasons mentioned above, the Government of India declined to declare article IX of the treaty of 1817 to be still in force, or to recognise it as involving any obligation on the British Government to surrender its own subjects. But the Act of 1872 bore on its face the result of a change of policy. The old principle, so often insisted upon by the Court of Directors, that Native British subjects must not be surrendered for trial by State Courts, has been abrogated. In a well-known despatch of 1833 the Court of Directors had ruled, as they ruled in the Baroda correspondence of 1848, that British subjects apprehended in British territory for offences committed in Native territory were amenable only to British tribunals. The Extradition Act of 1854 made no distinction between Native subjects of the British Government and subjects of Native States, but as it was merely permissive, except when treaties had been concluded, it did not impose on the Government any obligation to surrender Native British subjects. In the Extradition Resolution of 1871 it was pointed out that there is no such distinction in religion, education, and social habits between Native British subjects and the subjects of Native States as to justify the extension to them of rights of ex-territoriality to the same extent as to European British subjects.<sup>5</sup> Not only do the Acts of 1872 and 1879 permit the extradition of Native British subjects, but under the fifth of the extradition rules the Political Agent is, in certain circumstances, bound to make over persons of that description to be tried by the ordinary Courts of the State in which the offence was committed, if the Courts have, by custom or by the express recognition of the Governor-General in Council, power to try them when surrendered.<sup>6</sup> This obligation, however, is not absolute, for it may be relaxed by a special order under the eighth rule. Briefly and generally, Native British subjects may now be surrendered for trial by State Courts for offences committed in State territory, when their surrender appears to be customary, convenient and unobjectionable. The old absolute prohibition of their surrender has been withdrawn.

Accordingly, in the letter of January 1877, the Government of India admitted the expediency of granting what Baroda could not claim as of right, and "fully appreciating the high character of the present Baroda Administration," had no objection under existing circumstances to direct the Agent to the Governor-General, as a general rule, to make over to the ordinary Courts of the State such Native British subjects as might be forwarded under his warrant. As regards the words "without delay or hesitation" in the treaty of 1817, the Government of India observed that the procedure prescribed by the Act was intended to secure the utmost expedition consistent with safety. They did not understand Sir Madhava Rao, who argued the case for the Baroda Darbar, "to contemplate any alleged offender being surrendered without previous inquiry." It will have been noticed in the account of the case of Pir Bakhsh (*supra*, paragraph § 547) that even when extradition is requested by the French authorities, the application is by custom supported by a warrant and a summary of the charges.

§ 555. In the Resolution of 1871 the Government of India, speaking of the extradition of Native servants of the British Government, said "jurisdiction should remain with the Political Agent in all cases in which the accused are servants of the British Government, or servants of the Political Agent, or of any officer of Government officially employed within the State, whether the accused be a British subject or not." Though the letter of July 2, 1884, describes the retention of jurisdiction in these cases as the general custom, a part of the Baroda correspondence of 1876-77 suggests that the Political Agent should look rather to his powers under the Act and rules than to the official position of any accused person. A general description of the system in force must by no means be understood as limiting any discretion in dealing with extradition cases which the law and rules allow. Mr. Melvill proposed some draft rules for the jurisdiction over, and extradition of, public servants of the British and Baroda Governments committing offences in the territory of the other Government in the performance of, and in connection with, their official duties. The draft rules

<sup>5</sup> Resolution No. 152-J, dated August 8, 1871, paragraph 9.

<sup>6</sup> See Appendix D,

added nothing at all to the discretion already enjoyed by the Agent to the Governor-General, and would have admitted a claim on the part of the Baroda Darbar to refuse extradition in certain cases,—an admission entirely opposed to settled principles. The draft rules were rejected, as they deserved to be, and in rejecting them the Government of India said—“The Governor-General in Council considers it inexpedient to recognise, in the matter of extradition, any distinction between officials charged with offences and other persons so charged ..... he believes that the object of the proposed rules—that is to say, the protection of officials from an abuse of the law of extradition—can be fully obtained by the rules already in force. Under the rules in force all surrenders, whether by Baroda to British authorities, or by British to Baroda authorities, are effected through the Agent to the Governor-General; it is therefore fully within the power of that officer to see that the provisions of the law are reasonably enforced and with a due consideration to public convenience.”

§ 556. These orders were given on June 4, 1877, and have since been acted upon. In 1889 the Baroda Darbar requested the extradition of a Baroda subject who was in British service and was accused of having committed mischief by fire in Baroda territory. The man was a policeman serving under the Political Agent in Mahi Kantha, and the alleged offence was unconnected with his official duties. The Bombay Government intimated to the Agent to the Governor-General, Baroda, their opinion that the accused, being a servant of the British Government, should not be tried by a Baroda Court but by the Court of the Agent to the Governor-General or that of his Assistant. The Agent to the Governor-General referred the case to the Government of India, pointing out that the views of the Bombay Government were inconsistent with the arrangements sanctioned in 1877. The Bombay Government supported their opinion by quoting the Resolution of August 1871, but the Government of India decided that the Agent to the Governor-General might use his discretion in such matters as heretofore.<sup>7</sup>

§ 557. On the other hand, the case of Balwant Rao Bute, 1891, shows that in Central India it is the general rule that servants of Government shall not be surrendered to Native States. The Chief Justice of the Indore State obtained a warrant against Balwant Rao on a charge of defamation founded on an article published in the *Eastern Herald*, a weekly English newspaper printed in the Mhow Cantonment. Defamation is not an extradition offence, and the warrant was framed for execution in railway jurisdiction. Balwant Rao was in the city of Ujjain in Gwalior territory. The Gwalior Police, aided by some Indore Police and the Railway Police officer who held the warrant, seized Balwant Rao in Ujjain, and when he objected that the arrest was illegal and refused to go with them, dragged him off to the railway station, treating him so roughly that he died of syncope. There was little doubt that Ram Sahai, a Railway policeman in British service, was implicated in the illegal arrest, if he did not join in the assault. A special Judge was appointed by the Gwalior Darbar to try the case, who was, in the opinion of the Agent to the Governor-General, competent to arrive at a just decision. It was obviously inconvenient to arrange for the separate trial of Ram Sahai by a British Court. The orders of the Government of India addressed to the Agent to the Governor-General were thus expressed:—“The Government of India have heard with satisfaction that the Gwalior Darbar have specially appointed an experienced Judge to try the case, and that the Indore Darbar have consented to surrender their subjects and officials who are implicated in the charge. You may now proceed to surrender to the Gwalior authorities Ram Sahai, the Railway policeman accused of complicity in the illegal arrest of the late Balwant Rao. As you have pointed out, it has not hitherto been the practice in Central India to give up to a Native State for trial on a criminal charge a British subject who is also a Government servant, and the Government of India have no intention of sanctioning any departure from that principle as a general rule. In this case there are, however, peculiar circumstances which, in the opinion of the Governor-

<sup>7</sup> The Baroda correspondence will be found in Pro. A., December 1889, Nos. 148-157. Judicial I., December 1889, Nos. 1-40, and Pro., Internal A.,



General in Council, render it advisable, that it should be exceptionally treated, and, moreover, it must be specially remembered that a full preliminary inquiry into the charge against Ram Sahai has already been made by the Political Agent. At the same time it must be clearly understood that his extradition is not to be regarded as forming a precedent for the surrender of Government servants in future." The exception thus proves the existence of the rule so far as the Central India States are concerned. Ram Sahai was found guilty, apparently, of culpable homicide not amounting to murder, and with four others was sentenced to fourteen years' rigorous imprisonment and fine. The case formed the subject of questions in the House of Commons. The sentences were reduced on appeal.<sup>3</sup>

§ 558. Another case in which the Government of India agreed to the extradition, if necessary, of a servant of the British Government was that of the murder of General Azim-ud-din Khan, Vice-President of the Rampur Council of Regency. We have stated the chief facts in paragraph § 527 above. None of the assassins were captured at the time when the General was killed. The evidence collected by August 4, 1891, if credible, proved that thirteen men took part in the murders. Of these, Mustafa Khan, a Tahsildar in the service of the British Government, was apparently guilty of abetment, while his two brothers, Haji Mujtaba Khan and Saadulla Khan, were supposed to have been actually engaged in the commission of the offence. These three men were as yet at liberty in British territory, two in the Cawnpore district and one in the district of Moradabad. The rest of the accused were in Rampur territory, most of them in custody. As we have seen, it was arranged that the case should be tried by a special Court to consist of British officers; and it was further intended that this Court should sit in Rampur territory. The North-Western Provinces Government proposed to obtain from the Rampur Darbar a requisition for the extradition of Mustafa Khan and his brothers, and to take action upon it under section 14 of the Act of 1879. They observed, with advertence to section 8 of that Act, that it was doubtful whether Mustafa Khan and his brothers were not Native Indian subjects of Her Majesty and as such entitled to be tried according to the law relating to Criminal Procedure in force in British India. The Government of India approved the proposal to have a preliminary inquiry into the guilt of these men made under section 14 of the Act, but pointed out that even in the event of their being British subjects, and supposing that *prima facie* evidence of their complicity in the crime were to be obtained, there would be no legal necessity for their being tried in British territory by a British officer separately from the rest of the accused, who would be tried by a Rampur tribunal. "The object," said the Government of India, "of section 8 of Act XXI of 1879 is only to secure that British subjects shall under certain circumstances be amenable to British Indian Criminal Law for offences committed outside British India, and it is not to be construed as necessitating the trial within British India of such persons for such offences. Under these circumstances His Honour the Lieutenant-Governor will probably think it more convenient and conducive to the ends of justice, if sufficient evidence against these three persons is forthcoming, to make them over for trial, whatever their nationality, to the special tribunal which it is in contemplation to constitute in the State of Rampur."

In the end sufficient evidence was not forthcoming, and the extradition of the three men was not granted. But Mustafa Khan the Tahsildar, who had been suspended, was unable to free himself from suspicion and was not restored to the service of Government.

The inference from these cases is that when it is known that an accused person will have a fair trial before a competent Court and the convenience of justice will be best served by his extradition, as, for instance, when he is jointly charged with others who will be tried before that Court in State territory, the

<sup>3</sup> Pro., Secret I, February 1892, Nos. 119-144, and Pro., Internal A, November 1894, Nos. 167-176. There is another case which shows that it is the rule in Central India that servants of the British Government shall be tried by Political Officers, viz., Pro., Internal A, October 1891, Nos. 104-195. A boundary chaprasi was tried by an Indore Court for an offence against the Indore Postal Law. The Agent to the Governor-General remonstrated and the man was released. The Government of India called for a report but passed no orders upon it.

mere fact that an accused person is in the service of the British Government or is a Native British subject is not sufficient ground for refusing to surrender him. But in cases of doubt, as, for example, should the point arise again in Central India, it should be borne in mind that rule 8 of the Extradition Rules can be brought into operation notwithstanding anything contained in rules 5, 6 and 7. Under rule 8 a Political Agent can obtain in any case from the Governor-General in Council, through the proper channel, a special order either to try the case himself or to make it over for trial to the ordinary Courts of the State, as may be most appropriate in the particular circumstances.

§ 559. In 1883 a full report was submitted under the orders of the Lieutenant-Governor, Sir Charles Aitchison, on Punjab Extradition. The orders of extradition in the Punjab, the subject being in that Province in a peculiar and somewhat complicated condition. The object of mentioning the case here is to reproduce some important remarks from the orders passed upon the reference of Sir Charles Aitchison by the Government of India; and we shall therefore enter into the details of the matter no further than is necessary for the purpose of explaining the context in which these remarks were made. We have already alluded to the rules contained in the despatch of the Court of Directors to the Government of Madras, No. 3, of June 1, 1836, and it will be convenient to quote them here. They were thus worded:—

“*1st*—British subjects apprehended in the British territory, on any charge of offences committed within the possession of any Native Prince, are amenable only to British tribunals.

“*2nd*—British subjects apprehended in the territory within which the offence is alleged to have been committed, are amenable to the jurisdiction of the tribunals established there.

“*3rd*—The subjects of Native States, wherever apprehended, are always amenable to the British Courts for crimes and heinous offences committed within the British territory.

“*4th*—British subjects charged with heinous crimes committed within the British territory, who may have taken refuge within the territory of a Native State, are to be delivered up to justice, and *vice versa* with respect to the subjects of a Native State.”

As we have seen, the prohibition of the surrender of Native British subjects implied in the first of these rules is no longer absolute. The other three rules are in accordance with the present law and practice. The four rules were circulated for guidance in the Punjab in 1849. In 1856 Sir John Lawrence, the Chief Commissioner, laid down, with special reference to Kashmir, some more detailed rules based upon the rules of the Court of Directors. The rules thus made by Sir John Lawrence in 1856 were published in the *Punjab Government Gazette* in 1858 and declared by the Judicial Commissioner in the same year to be of general application. *Sanads*<sup>9</sup> granted to the Phulkian Chiefs in 1860 and to the Raja of Faridkot in 1863 contain a provision that the Chief shall be guided, with regard to British subjects committing crime and apprehended in his territory, by the rules contained in the despatch of 1836. The *sanads* do not mention the rules made by the Chief Commissioner in 1856. Various Extradition Acts were passed, in 1849, in 1854, in 1872 and in 1879; and the result in 1884 was that there were two systems of extradition in force in the Punjab; one under the Extradition Act of 1879 and the usual extradition rules, and the other under the rules of Sir John Lawrence regarded as generally applicable since 1858. Unless certain arrangements made with Bahawalpur in 1854 and Kashmir in 1856 were considered to be equivalent to treaties, the only Punjab States with which treaties within the meaning of section 1 of the Extradition Act had been concluded were Patiala, Jind, Nabha and Faridkot, and even in the case of these States the treaty provisions related only to British subjects committing offences in State territory. Sir Charles Aitchison wished to modify the rules of 1858 so as to bring them into conformity with the provisions of the Extradition

<sup>9</sup> Aitchison, IX, pages 74, 93-94, 102, 107.

<sup>10</sup> Pro., Internal A., September 1884, Nos. 22-33.

Act; and to do this by substituting for the old rules a brief proceeding, including a revised list of offences for which extradition should be made, and constituting the establishment of a *prima facie* case an essential preliminary to any demand for the surrender of an alleged criminal. The Government of India did not agree to these proposals. They passed orders in a letter<sup>10</sup> of August 13, 1884, in which they said:—"The fitting remedy, if the Punjab States are dissatisfied with their present rules, seems to be to abrogate the rules and follow the procedure of the Act." If practical experience had shown or should in the future show that any change would be necessary, it would be better to withdraw the rules of 1858, and gradually to substitute for them the procedure of the Extradition Act and the rules framed under it, than to enter into any fresh formal agreements with the Chiefs. "*The conclusion,*" they observed, "*of new agreements in the nature of Extradition Treaties with Native States would be opposed to the policy of Government.* An additional argument may be furnished by the consideration that *the Government would derive no benefit from the negotiation of fresh treaties but rather the contrary; for, as Paramount Power, they possess the prerogative of claiming the extradition of offenders from all Native States.*" The Governor-General in Council then directed certain omissions, which it is unnecessary to specify, to be made in revised copies of the proceeding of Sir John Lawrence containing the rules of 1856; and, lastly, dealt with the proposal to insert in the rules a provision prescribing the establishment of a *prima facie* case before the surrender of an offender is demanded. This insertion the Government of India considered desirable but not indispensable. The third of Sir John Lawrence's rules prescribed that subjects of either State, who should escape into foreign territory after having committed any of certain offences, should "be liable to be surrendered on being demanded by either Government." The rule went on to require the British Officer concerned to make a summary inquiry before directing surrender; but though the Government of India did not expressly refer to this provision, they declared that *the establishment of a prima facie case "should invariably be regarded as essential by the British Officer from whom the surrender is demanded. This ruling,"* they said, "*has been recently affirmed in an analogous case in which it was decided that where an Extradition Treaty was silent on the point in question, the procedure prescribed by the Act and the rules framed thereunder should be observed. By a parity of reasoning, it has been ruled that every Political Officer concerned should satisfy himself that the punishment inflicted by the Court of a Native State upon an extradited offender is neither barbarous nor excessive, although there is no provision to this effect in the procedure under which he receives his authority.*" The meaning of these last few words is obscure, for there is a provision to this effect in the ninth of the extradition rules now, as then, in force. At the time the Government of India had in view directions given in the often-quoted Resolution of August 8, 1871. The analogous case to which they referred was that of Baroda stated above in paragraph § 553.

§ 560. The general case of Punjab Extradition having been thus closed, a long The Kashmir Extradition Case, 1884 to 1892. and intricate correspondence followed, beginning in September 1884 and ending in March 1892, on the subject of extradition with Kashmir. It is only necessary to state the results arrived at, with such explanations as will make them fully intelligible, and to note one or two points of importance incidentally decided by the Government of India.

Extradition from and to Kashmir was regulated, as already implied, by Sir John Lawrence's rules of 1856. In 1877 the Government of India had given directions as regards Kashmir that action should continue to be taken under those rules until the validity of extradition under them was impugned by competent judicial authority. This order was repeated in the letter of August 13, 1884, from which some essential passages have been quoted above. The contingency contemplated occurred in 1886. On March 12 of that year Colonel Nisbet, then Deputy Commissioner of the Rawalpindi District, passed an order under the third of the extradition rules of 1856 finding that one Ahadjo was a Kashmir subject and directing his extradition on a charge of theft of property exceeding Rs. 50 in value. Colonel Nisbet signed this order as "Magistrate, Rawalpindi District." The Punjab Chief Court

found that the rules of 1856 and the order prescribing them for guidance were made by "the person administering the Executive Government in the Punjab" and did not confer any authority upon a District Magistrate as such to pass an order upon an application by a Foreign State for the extradition of a subject of that State. The Court set aside the order of Colonel Nisbet and returned the case without further instructions. The judgment did not in terms decide that the rules of 1856 were unsupported by any legal authority; but in effect it completely undermined the practice of surrender by executive officers under those rules. The Punjab Government Advocate advised that the Chief Commissioner of the Punjab had no authority under any law to empower Deputy Commissioners to grant extradition; and that the rules, regarded as mere executive orders, would not justify interference with the liberty of the subject. The Lieutenant-Governor considered that the old procedure must be abandoned and the provisions of the Extradition Act followed. The Government of India agreed and the Resident was instructed to inform the Maharaja that the orders of 1856 had necessarily been abrogated. The Darbar disliked the provisions of the Act and rules which enable and require the Political Agent to try certain cases himself; and in deference to the susceptibilities of the Kashmir Government it was at first arranged that the Political Agent or Resident should not issue his warrants except when the accused persons were Native British subjects, the Darbar being at liberty in other cases to make requisitions through the Resident under Section 14 of the Act. This tentative arrangement led to delays and the Darbar ultimately acquiesced in the procedure by warrant of the Political Agent even in the case of Kashmir subjects. Finally the Government of India decided that all requisitions for surrender must be made by the Darbar to the Resident, who must act under Sections 11 to 13 of the Act of 1879, that is, by warrant, whether the persons wanted are Kashmir subjects or not; that the Kashmir Darbar must comply with requisitions of the British authorities for the extradition of persons charged with any of the offences specified in the schedule of the Act; and that District Officers in the Punjab must send all requisitions for the surrender of such persons to the Resident in Kashmir accompanied by *prima facie* evidence of criminality.

*Kashmir vakils* had been appointed in attendance on Deputy Commissioners of the Punjab and Kashmir Frontier Districts, and the services of these *vakils* had been utilised in extradition business. Under the procedure now prescribed these officials became unnecessary, and were withdrawn from the Jhelum, Gujrat and Gurdaspur Districts; while the *vakils* at Sialkot and Rawalpindi were restricted to duties connected with the supervision of Kashmir State property in those districts and were no longer empowered to take any action with regard to the extradition of offenders.

§ 561. The former practice, however, was allowed to continue in one very important particular which deserves special notice because it illustrates the distinction between the pursuit and arrest of offenders in foreign or State Territory and their extradition for the purpose of trial by the Courts of another State. With the approval of the Government of India, the Punjab Government issued a circular to Commissioners and Deputy Commissioners explaining the procedure to be followed by officers in the exercise of their executive functions, that is, in cases in which the British authorities desire the extradition of supposed offenders from the Native States. The circular pointed out, as above, that the requisitions must be sent to the Resident. "But," it continued, "although formal application for surrender must in each case be thus made to the Resident, it is not intended to stop complainants (and others from taking steps to secure the immediate arrest of offenders in Kashmir as a preliminary to their extradition. The Kashmir authorities have acted hitherto in general accordance with the procedure which can be followed by our officers under sections 15 and 16 of the Act, and British Police Officers and complainants are not prevented from following accused persons, as heretofore, into Kashmir territory and invoking the aid of the State officials for the arrest of the supposed offenders pending the issue of a warrant for extradition by or through the Resident. Similarly

The regular extradition procedure does not prevent the immediate pursuit and arrest of offenders in State Territory.

Deputy Commissioners who have addressed to the Resident a requisition for extradition may, in cases where immediate arrest seems necessary, apply direct to officers in charge of neighbouring Kashmir districts for the preliminary arrest and detention of the accused person or persons, for whose extradition the requisition has been submitted." Under section 15 of the Act a Magistrate in British India may in certain circumstances issue a warrant for the arrest of a person accused or suspected of having committed an offence out of British India, and may, under section 16, detain a person arrested on such a warrant for not more than two months. The Kashmir authorities having traced a supposed offender to any district in the Punjab can move<sup>11</sup> the District Magistrate to arrest him under section 15. The moral of all this is that it is one thing to catch the offender, and another thing formally to determine, by means of the extradition procedure, in what jurisdiction or by what Court he shall be tried; and that the necessity for compliance with the formalities of that procedure need not interfere, and should never be allowed to interfere, with any prompt police measures which are requisite to facilitate the capture of the supposed offender in whatever territory he may be.<sup>12</sup>

§ 562. In the Kashmir correspondence the Government of India incidentally gave a general opinion as to the authority of the Magistrate to accept bail in certain extradition proceedings. The Political Agent, before issuing a warrant under section 11 of the Act, must satisfy himself (see rule 4 of the extradition rules) that there is a *prima facie* case against the accused person. There is obviously no necessity for the Magistrate who receives the warrant to do the work of the Political Agent over again. Accordingly the Magistrate<sup>13</sup> has no jurisdiction to inquire, either before or after making an arrest, into the truth of the accusation made against the person to be arrested; nor has the Magistrate in this case authority to admit the accused person to bail. The Magistrate must execute the warrant according to its tenor by forwarding the arrested person to the place and delivering him to the person named therein. But in the proceedings under section 14 preliminary to the issue of a warrant of extradition, not by the Political Agent, but by the Governor-General in Council or the Local Government, the case differs. When an extradition demand is made to those authorities, they may order a Magistrate to inquire into the truth of the accusation brought against the person whose extradition is requested. During the proceedings of the Magistrate under this order, his action in regard to accepting or refusing bail should be governed by the ordinary provisions of the Criminal Procedure Code. But if, on receipt of the report of the Magistrate stating the result of his inquiry, the Government of India or the Local Government are satisfied that the accused person ought to be surrendered, and therefore issue an extradition warrant, then, when the accused person has been arrested under that warrant, the Magistrate has no power to admit him to bail. The case is analogous to the case of the issue of a warrant by the Political Agent. The substantive question of the *prima facie* guilt of the accused is determined by another authority, and the Magistrate discharges the supplementary function of causing the delivery of the accused person to the proper officials at the proper place.<sup>14</sup> It is probable, however, that with a view to prevent hardship in petty cases, the law will be amended so as to permit the acceptance of bail in the case of accused persons brought before a Magistrate on the warrant of a Political Agent.<sup>15</sup>

<sup>11</sup> See Punjab Government letter to Resident, Kashmir, No. 65, dated January 28, 1891. Pro., External A, January 1891, No. 32.

<sup>12</sup> See Punjab Government Circular No. 6-215, dated April 21, 1891. Pro., External A, May 1892, No. 47. Since the orders of August 1884 "the validity of the Extradition rules of 1856 and 1858 has been formally challenged in the law Courts (vide note to page 164 of Chief

Court Circulars, edition of 1887, and Criminal Judgment No. 20 of Punjab Record of 1891), and all extradition proceedings for the surrender of criminals by Magistrates in Punjab Districts are now conducted in accordance with the provisions of the Extradition Act." Punjab Government's letter No. 438, dated Aug. 30, 1894; Pro., Internal A, November 1894, Nos. 64-55.

<sup>13</sup> See Chief Court Book Circular No. VI 2172-G., dated April 28, 1891, paras. 6 and 7. Pro., External A, May 1892, No. 49.

<sup>14</sup> The following is a list of the voluminous papers in the Kashmir Extradition file:—

Pro., External A, May	1892, Nos. 25-51.
" "	" 1891, " 69-97.
" "	June 1889, " 171-173.
" "	July 1888, " 85-91.
" "	January " 1-10.
" "	September 1888, " 85-91.

Pro., External A, August	1885 Nos. 252-268.
" Secret E, December	" " 192-245.
" Internal A, "	1884, " 68-75.

<sup>15</sup> Pro., Internal A, May 1892, Nos. 21-23; and September 1892, Nos. 85-86.

§ 563. There is only one more point which need be mentioned in connection with Kashmir Extradition in particular. At one stage in the correspondence the Resident proposed that a Convention should be negotiated on the subject with the Maharaja of Kashmir. The Government of India<sup>16</sup> explained "*that the conclusion with Native States of new agreements bearing any resemblance to Extradition Treaties would be opposed to the policy which has for many years been consistently observed by the Government of India.*"

We may, however, notice here one or two more points connected with the Extradition Law at large in which the Government of India has given opinions of general application. In the Baroda Extradition correspondence the Resident proposed that the schedule of extradition offences appended to the Act should be enlarged and that section 109 of the Penal Code relating to abetments and section 511 relating to attempts should be included amongst the additions. After consulting the Government of Bombay, the Government of India declined to enlarge the schedule. The reasons for refusing to include abetments and attempts in particular are not on record, but the Government of India said<sup>17</sup> generally: "The list of sections given in the schedule was very carefully prepared when the Act was framed, and the Government of India is unwilling to extend it unless such extension is distinctly proved to be necessary in the interests of justice." In 1886 on a reference from the Officiating Agent to the Governor-General, Baroda, the Government of India ruled<sup>18</sup> that "*abetment of an offence is not an offence for which extradition can be demanded under the Foreign Jurisdiction and Extradition Act, 1879.*" Having regard to the extensive powers of the Government of India and the Local Government under section 14 of the Act, it would perhaps be more correct to say that abetment of an offence is not an offence in respect of which a Political Agent can issue a warrant under section 11.

Abetment of an offence is not a scheduled extradition offence under the Act of 1879.

§ 563 A. There is a rather important general ruling in the case of one Cowasji Rustomji, a Baroda subject, which came before the Government of India in September 1893. The facts and the decision upon them are sufficiently stated in the Government of India letter which runs thus:—

"It appears that the accused was surrendered last year by the Baroda Darbar on a charge preferred under section 394 of the Indian Penal Code, and that the British Magistrate, while discharging him of the offence originally charged, directed that under section 6 of the Cattle Trespass Act, 1891, he should pay to the complainant in the case the sum of Rs. 64-2 as compensation. The Governor-General's Agent at Baroda has expressed the opinion that such an order was not regular, inasmuch as the accused was discharged in regard of the offence for which extradition was demanded; whereas he was convicted of an offence for which extradition could neither be demanded nor granted.

"In reply I am to inform you that the generally accepted view regarding extradition is that, in the absence of special provisions to the contrary contained in the treaty or agreement under which the extradition takes place, when an accused person is once surrendered in order that he may stand his trial for an offence, the State which makes him over has no more concern with him than if he had been duly apprehended when and where the offence was committed; and he is liable to be tried for any offence, whether extraditable or not, which he may have committed in the territories of the State to which he is surrendered.

"I am further to point out that the limitation of this right, usually inserted in extradition treaties on behalf of Great Britain, only prohibits the trial of the offender for other facts than those disclosed in the application for surrender, and does not interfere with his conviction for a lesser offence when the facts turn out to be insufficient to support a charge of the greater.

<sup>16</sup> Letter No. 2371 E., dated 29th November 1887.

<sup>17</sup> To Bombay, No. 88-I.J., dated 9th May 1879.

Pro., Internal B, July 1886, Nos. 81-45.

<sup>18</sup> Pro., Internal A, July 1886, Nos. 28-29.

“It is hardly necessary to add that no State is at liberty to deliberately prefer fabricated charges of extraditable offences simply with a view to getting into its power persons who may have committed non-extraditable offences and sought refuge in a neighbouring State. But it is not suggested in the present instance that the application for extradition was made otherwise than in good faith.”

In this ruling nothing turns on the position of the Paramount Power. The contention of the Governor-General's Agent that the offence of which Cowasji Rustomji was convicted was one for which extradition could not be demanded was not specifically noticed in the reply. This omission in no way impairs the general principle that the Paramount Power may demand the extradition of any person from a Native State. If it had been necessary to go into the matter in the particular case reference would have been made to the special understanding come to in 1877 with Baroda.\* As a concession and an act of favour it was then arranged “that until further orders the offences for which British officers may demand the surrender of Baroda subjects shall be limited to those for which Act XI of 1872 authorises British officers to surrender subjects of the Baroda State.” But the Government of India added—“This ruling must not be held to apply to British subjects whose surrender is demanded at the hands of the Baroda Government, in regard to which persons a larger catalogue must be allowed.”

§ 564. In 1892 the Government of the Nizam demanded the surrender of one Chandria who was accused of having committed dacoity in Hyderabad territory.

**Extradition of prisoners. Chandria's case, Hyderabad, 1893.** The Resident at first granted a warrant, but on learning that Chandria was in the Yerrowda Jail in British territory undergoing a sentence of imprisonment which did not expire till February 23, 1893, the Resident informed the Hyderabad Minister that Chandria would, if his extradition were then desired, be given up for trial by the Hyderabad Courts on release from prison at Yerrowda. The Minister deprecated the delay and the Resident referred to the Government of India the general question whether a prisoner undergoing a sentence of imprisonment in a jail in British India can legally be surrendered under the extradition law to a Native State before the expiry of that sentence. The Government of India replied on February 17, 1893, about a week before Chandria's sentence expired. With regard to the particular case, they agreed to the surrender of Chandria as his sentence would have expired or nearly expired by the time that the investigation in Hyderabad would be concluded, and it would be unnecessary to arrange for his retransfer to a British jail at the close of that investigation. With regard to the general question, the Government of India said that an authoritative ruling could be given only by a Court of Justice. They observed, however, that although there appears to be nothing in the general law or in the Extradition Treaties with Hyderabad which prohibits the surrender of persons undergoing sentence of imprisonment, yet it is not clear whether the retransfer of such persons to British territory they could be lawfully detained for the unexpired portions of their sentences. “In these circumstances,” it was added, “it is obviously desirable that every such case should be treated on its merits as it arises, regard being had to the nature of the offence for which the offender is undergoing punishment, the term of imprisonment as yet unexpired, the nature of the offence for which his surrender is demanded, and the probability or otherwise of his being convicted for that offence.” It was then requested that such cases as that of Chandria might be referred to the Government of India for orders before the issue of a warrant for extradition.<sup>19</sup> The absence of any express law under which a convict surrendered during the term of his imprisonment to a Native State can be relegated to undergo the balance of his period of imprisonment on his return from that State, has been noted for provision when Act XXI of 1879 comes under amendment.<sup>20</sup>

<sup>19</sup> Pro., Internal A, March 1893, Nos. 225-226.  
<sup>20</sup> “ “ “ “ February 1885, Nos. 13-19.

\* The orders of 1877 are in Pro. A, Judicial I., December 1873, Nos. 1-40. The recent ruling quoted in the text is in Pro., Internal A, September 1893, Nos. 257-261.

§ 565. The Government of India in 1875, when they issued the Rules under the Extradition Act, at the same time

General instructions of 1875 as to the working of the Extradition Act and Rules.

communicated to chief political authorities some general instructions as to the working of the Act and Rules which may be copied here for convenience of reference, though the point regarding the inadmissibility of bail in certain cases has already been noted above. The general instructions were incorporated in a series of separate letters<sup>21</sup> (which also disposed of certain points raised in the correspondence), and were thus worded:—

“The Governor-General in Council desires that special attention be drawn to section 8 of the Act. It must be distinctly borne in mind that, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, all trials held by a Political Agent must be held in conformity to the law and criminal procedure of British India as far as applicable.

“Attention should also be drawn to sections 12 and 14 of the Act. When a prisoner has been arrested under a Political Agent’s warrant (section 12) or under a warrant issued under section 14 by the Governor-General in Council or any Local Government, bail cannot be taken, and the person arrested must be removed in custody and delivered up at the place and to the person named in the warrant.

“With reference to Rule 12, I am to observe that if the persons sentenced to imprisonment by the Political Agent be not British subjects, they should be made over to the Native State for confinement in the local jail, provided the Political Agent is satisfied that the local jail is a suitable place for their confinement; but if the Political Agent considers that the local jail is not a suitable place for the confinement of the prisoners, or if there be other reasons rendering it inexpedient to confine the prisoners there, they should be dealt with in the same way as British subjects are dealt with under Rule 12.

“When a person not a British subject is sent to a British jail under the instructions contained in the preceding paragraph, the expense of his confinement in jail should, if practicable, be recovered from the Native State.”

§ 566. While the rules and these instructions were in contemplation the Government of India addressed<sup>22</sup> some general remarks to the Punjab Government which may usefully find a place here. “Formal Treaties of Extradition,” said the Government of India, “have been concluded with many of the Subordinate States in India. Where such Treaties exist, they prescribe, on the one hand, what the Chief may demand of the British Government, and what both parties are under positive obligation to do if demand is made. But *either party may voluntarily do much more than the treaty requires, although neither can without the consent of the other do what the treaty forbids.*

“*Now Act XI of 1872 applies of course only to the proceedings of British Officers. It in no way affects the rights or the powers of Native Chiefs, and imposes on them no obligation which does not otherwise devolve upon them.* But it extends greatly the powers of British officers to comply with requests made by Native Chiefs, and *it in no way diminishes the obligations which the British Government must discharge under treaties.* If Chiefs with whom Treaties of Extradition have been made prefer the procedure of the treaties, they may do so; the case will then come under section 14 of the Act. But if they prefer the procedure of section 11, and apply to the Political Agent for the issue of a warrant, then they must accept the conditions attached by law to that form of procedure.”

These remarks are applicable to the present Act of 1879, and the numbering of the sections here and in the general instructions quoted in the last preceding paragraph still holds good. But it will have been seen from the circumstances which led to the amendment of the Rajputana and Hyderabad

<sup>21</sup> Pro., Judicial A, May 1875, Nos. 1-33. The letters were all dated 6th May 1875, and were numbered thus: to Bombay, No. 52-J.; to Madras, No. 53-J.; to Bengal, No. 54-J.; to North-Western Provinces, No. 55-J.; to Punjab, No. 56-J.; to Oudh, No. 57-J.; to Central Provinces, No. 58-J.; to Burma, No. 59-J.; to Assam, No. 60-J.; to Mysore, No. 61-J.; to Coorg, No. 62-J.; to Ajmera, No. 63-J.; to Hyderabad, No. 64-J.; to Nepal, No. 65-J.; to Central India, No. 66-J.; to Rajputana, No. 70-J.; to Manipur, No. 71-J.

<sup>22</sup> To Punjab, No. 127-J., dated 23rd July 1874, Pro., Judicial A, July 1874, No. 87.



Extradition Treaties that we cannot now hold that States with Extradition treaties have an option between the procedure of the treaty and the procedure of the Act. If the treaty provides a procedure, that procedure must be followed; if the treaty provides no procedure then (see paragraph § 559 above) our officers should follow the procedure of the Act. The point, however, has probably little practical consequence now that the Rajputana and Hyderabad Treaties have been amended.

§ 567. On receipt of demands for extradition, Political officers should see that there is no risk of the persons whose extradition is demanded being twice punished for the same offence. In 1889 Bale and Ramphal, Nepalese subjects, were convicted in British India of being in dishonest possession of cattle stolen in Nepal; and a requisition for their surrender on account of the theft was made by the Nepal Darbar, notwithstanding the fact of their having been punished in British India in respect of the same acts as those for which their extradition was requested. In ignorance of the fact that the men had been already punished the Resident in Nepal issued a warrant requiring their surrender. The Government of India directed that the warrant should be withdrawn, and instructed the Resident that in future before issuing his warrant upon a demand for extradition in a theft case, he should endeavour to ascertain whether the accused person has or has not been already sentenced in British India for an offence under section 411 of the Indian Penal Code in respect of the same property. Section 411 relates to dishonestly receiving or retaining stolen property, and stolen property is so defined in section 410 of the Penal Code as to include property, of which the possession has been transferred by theft, whether the transfer has been made within or without British India. A person convicted under section 411 of the Penal Code could, under section 403 of the Code of Criminal Procedure, plead his conviction in bar of any subsequent charge of theft in respect of the same property. In the Nepal case under consideration Bale and Ramphal were not, at the date when the surrender was ordered, punishable under the law of British India for the offence on account of which their extradition was demanded. By the treaty of 1855 with Nepal, the Government of India were bound to surrender them only upon such evidence of criminality as would, according to the laws of British India, justify their apprehension and sustain the charge of theft if the offence had been committed in British India. This condition was not fulfilled, and the Resident was desired to refuse surrender if the demand were pressed. At the same time he was to explain that if there were other cases against these two men for which their extradition could be claimed, they would be surrendered—Ramphal at the expiration of his term of imprisonment, and Bale (who had served his term) when he should be again arrested.<sup>23</sup>

§ 568. We have stated elsewhere that, for the purposes of extradition to and from the territories of foreign powers, Native States must be regarded as part of the British Indian Empire (see paragraphs § 32 and § 33), and we have entered at considerable length on the special question of the extradition of deserters (see paragraphs § 151 to § 156 inclusive). In paragraph § 541 we explained that it was inexpedient and impracticable to treat the subject of extradition exhaustively. For general guidance in matters of extradition, Political Officers must refer to the Act and rules and to the general instructions reproduced in paragraph § 565. But some points seem to be well established by the cases summarised in this chapter, and, with a repetition of the remark that the whole subject is still in an imperfect stage of growth, we may recapitulate in this place the points that seem to us to be clear:—

Summary.

- (1) *In the absence of any express engagement to the contrary, the Paramount Power can demand the extradition of any person from a Subordinate State.*

- (2) *There is in practice no extradition of European British subjects to Subordinate States.*

- (3) *The policy of the British Government is opposed to the conclusion of extradition treaties with Subordinate States. But existing Extradition*

<sup>23</sup> Pro., External A, December 1890, Nos. 170-198.

*Treaties with many of these States have been so modified by further agreements as to substitute the procedure of the Act for the procedure of the treaties.*

(4) *Where extradition treaties exist, either party may do more than the treaty requires, but neither party may, without the consent of the other, do what the treaty forbids.*

(5) *An extradition procedure prescribed by treaty must be followed to the exclusion of that prescribed by the Act. But if an extradition treaty prescribes no procedure, the procedure prescribed by the Act should be adopted.*

(6) *British authorities cannot deliver up to a Native State persons entitled to the protection of British Laws except in accordance with the provisions of the Extradition Act.*

(7) *A Foreign State outside the internal protectorate having no extradition treaty with the British Government, cannot require that Government to deliver up its fugitives from justice; but that Government is not bound to afford them an asylum, and if the act charged would be an offence against British laws if committed in British India, it is in accordance with the comity of nations to deliver them up.*

(8) *In granting extradition to a Foreign State outside the internal protectorate, whether there be an extradition treaty with that State or not, and whether action be taken under the Act or upon its analogy, the Government of India will ordinarily construe the provisions of the Act very strictly in favorem libertatis, especially if there is reason to suppose that the person whose extradition is claimed may be subjected to barbarous treatment in the Foreign State.*

(9) *The Government of India may, if they see fit, grant extradition (a) of Native British subjects even if they are under no treaty obligation to surrender them, and (b) in respect of offences other than those scheduled in the Extradition Act.*

(10) *When there is a question of the extradition of a Native British subject to a Subordinate State, the provisions of the Act do not necessitate his trial by a British Court. He may be tried by the Political Agent, by an ordinary Court in British India or by a State Court according to circumstances and orders.*

(11) *In determining whether Native British subjects may be tried by State Courts, the efficiency or inefficiency of those Courts, the convenience of witnesses, the inconvenience of separate trials on the same facts, and generally the provisions of the extradition rules, are important points for consideration.*

(12) *In the absence of treaty provision or general or special instructions to the contrary, a British Officer from whom the surrender of any Native British subject is demanded should not comply with the demand unless a prima facie case is established against the accused person.<sup>24</sup>*

(13) *In the absence of treaty provision to the contrary a surrendered person may be tried for any offence which he may have committed in the State to which he is surrendered.*

(14) *Extradition must not be so granted as to risk a second conviction of the same person for what is actually or substantially the same offence.*

(15) *Bail cannot be accepted when the Political Agent or the Government has issued an extradition warrant; but it may be accepted when admissible under the Code of Criminal Procedure by a Magistrate making a preliminary inquiry in accordance with the orders of Government under section 14 of the Act.*

(16) *The abetment of an offence is not an offence in respect of which a Political Agent can issue an extradition warrant under the Act.*

(17) *When requisition is made for the extradition of a convict undergoing imprisonment in a British jail, the case must be treated on its merits, regard being had to the nature of his already proved offence and of the offence charged against him, to the probability of his conviction for the offence charged, and to the length of his term of imprisonment still to run.*

(18) *The adoption of the regular extradition procedure is no bar to the immediate pursuit and arrest of supposed offenders in British or State territory.*

<sup>24</sup> For the special rules in force in the Bombay Presidency, see paragraphs § 585 and § 588 below.

## CHAPTER XVII.

### EXTRADITION BETWEEN STATE TERRITORIES UNDER DIFFERENT JURISDICTIONS AND BETWEEN SUBORDINATE STATES.

§ 569. Having said so much as it seems desirable to say about extradition between British India and Foreign or subordinate States, we are about to come to the question of extradition from one Native State to another. We may, however, first refer to a question occupying a middle ground between extradition to and from British and State territory and extradition between State and State.

**Extradition from State territory under British jurisdiction. Secunderabad case, 1884.** We have seen that the leading case of jurisdiction in the Secunderabad Cantonment originated in an application for the surrender of two Natives, subjects of the Nizam, with a view to their being tried by the Hyderabad Courts for offences which, it was alleged, they had committed in the city of Hyderabad. As the British Government has in practice complete civil and criminal jurisdiction in Secunderabad, the Honourable C. P. Hbert, Law Member of Council, held that "the Cantonment of Secunderabad is not part of British India but is a place within which the Government of India has power to exercise, through its officers, complete jurisdiction, and for which it can legislate by executive orders." He thought we were justified in prescribing a simpler procedure for extradition from Secunderabad than that prescribed by the Act of 1879. Acting on these views the Government of India requested the Resident to draft rules authorising him to comply with requests from the Hyderabad authorities for the surrender of Native Hyderabad subjects accused of criminal offences and present or resident in the Cantonment of Secunderabad.<sup>1</sup> Accordingly, after some correspondence, rules were approved which empowered the Resident, on the written request of the Government of the Nizam, to direct that any person of the above description accused on reasonable grounds of having committed an offence within the meaning of section 40 of the Indian Penal Code should be arrested within Secunderabad limits and delivered over to an official of the Nizam. Analogous provision was also made for the arrest in, and surrender from, the Nizam's territory of persons reasonably charged with having committed offences in Secunderabad limits.<sup>2</sup> The rules were accepted by the Government of the Nizam.<sup>3</sup> The general principle implied in this case appears to be that *the Governor-General in Council is competent to prescribe by executive order a procedure for extradition between State territory under British jurisdiction and State territory under State government.*

§ 570. It follows from the immunity from British laws which is characteristic of State territory under State government that extradition as between subordinate States is not regulated by any Act of the British Indian Legislature. It may be regulated by express order of the Paramount Power in any particular case, or by rules prescribed by the Governor-General in Council and accepted by the States concerned. In paragraph 21 of the often-quoted Resolution of August 8, 1871, the Government of India said—"There need be no hesitation in requiring one Native State to surrender to another Native State the criminal subjects of the latter, and to require it to punish its own subjects for offences in another Native State, if the cases are serious enough to require our interference. The Native States have none of our niceties of law to fetter their action." In explaining the political isolation of Native States we referred to the Travancore and Cochin case, 1873-74, the Rajputana Border Criminals case,

<sup>1</sup> Pro. A, Judicial I, July 1883, No. 29. See also paragraph 469

<sup>2</sup> Pro. A, Judicial I, April 1884, Nos. 1-5.  
<sup>3</sup> Pro., Internal A, January 1885, Nos. 402-415.

1874, and the Baháwalpur and Bikanir case, 1875 (see paragraphs § 16 and § 18), in illustration of the objection entertained by the Government of India to the conclusion, as between subordinate States, of extradition agreements. In the cases of Travancore and Cochin, as of Jaipur and Patiala and Kashmir and Chamba, mentioned in the same part of this work, interstate extradition rules were approved by the Paramount Power. Rules for the same purpose have been similarly approved in many other cases, as we shall presently show. In the Rajputana Border Criminals case, 1874, the Government of India, in a passage which we have quoted in paragraph § 20,<sup>4</sup> ruled, quite consistently with the doctrine laid down in the Resolution of 1871, that if one Rajputana State refused extradition to another State, the case would become one of a dispute between two States to be settled "by order of the Agent to the Governor-General, on whose demand a State must surrender." In the Bikanir and Baháwalpur case, 1875, the Superintendent, Baháwalpur, notified that "no offenders will be exchanged except under section 11 of Act XI of 1872." "I cannot," said Mr. Alfred Lyall, "see the use of importing the procedure of a rather difficult Act (not always at hand or intelligible to Native Darbars) into the relations between two outlying Native States." The Government of India<sup>5</sup> held that the Superintendent of Baháwalpur might have demanded the surrender of the criminals from the Bikanir Darbar without reference to any treaty; and (as already said in paragraph § 18) that if the request had been refused, it would have been in the power of the Agent to the Governor-General, Rajputana, to have insisted on the compliance of the Bikanir Darbar.

§ 571. "The theory of extradition," said Sir Andrew Scoble,<sup>6</sup> "is that the criminal is surrendered because the duty of punishing the crime cannot be effectively or justly performed by any nation but that whose laws have been broken." But it is obvious that in the case of States which are not nations and which are in common subordination to the Paramount Power, the duty of punishing the crime when the subjects of more than one State are concerned as complainants or accused may be assigned to some tribunal which has jurisdiction in any or all of certain specified States to compel the appearance of parties and award penalties. Upon this principle rests the operation of the

The Rajputana Courts of Vakils. so-called International Courts of Vakils in Rajputana; and so far as that operation is effectual, it supersedes the necessity for extradition arrangements. These arrangements have, however, been made between many of the Rajputana States and some neighbouring States in the Punjab in such a way, it is believed, as to supplement without impeding the working of the Courts of Vakils.

The object and constitution of the Courts of Vakils are thus described in Their object and constitution. the rules sanctioned<sup>7</sup> in 1870:—

"Courts of Vakils sit at Ajmir, Abu, Udaipur, Jaipur, Jodhpur, and Deoli. They are established with the special object of securing justice to travellers and others who suffer injury in territories beyond their own Chief's jurisdiction, and they hear and decide on all offences against person and property laid down in the Indian Penal Code and in the Extradition Treaties between the Government of India and the States of Rajputana, which cannot be decided by any one State.

"The Court of Vakils at Abu, composed of the Vakils attendant on the Governor-General's Agent, is under the guidance of one of the Assistants, and is an Appellate Court superior to those at the several Agencies.

"The Courts of Vakils at Udaipur, Jaipur, Jodhpur, and Deoli, under the guidance of the respective Political Agents of Mewar, Jaipur, Marwar and Haraoti, are composed of Vakils attendant on the Agents from each of the neighbouring States, and are subordinate to the Upper Court of the Governor-General's Agent."

§ 572. When the Government of India originally approved the proposals which led to the institution of these Courts, Colonel Sutherland, then Agent to

<sup>4</sup> See page 26 of Vol. I.

<sup>5</sup> Pro., Political A., August 1875, Nos. 854-856.

<sup>6</sup> In the Nepal case of Ramphal and Bala, 1890, abstracted above, paragraph § 567. See page 8 of the K.-W. of 170. External A., December 1890, Nos. 170-198.

<sup>7</sup> Pro., Judicial A., December 1870, Nos. 8-14. As to the smooth working of the Courts of Vakils with the Rajputana interstate extradition rules, see demi-official from Agent to the Governor-General in Rajputana, No. 190, dated October 8, 1894.

the Governor-General in Rajputana, was specially enjoined to secure a delegated authority from the States concerned. The Governor-General in Council gave him "full discretion to employ a Court superintended by a British officer and composed of the Vakils of the different States," and added, "you will be careful to obtain from each of the Native States a formal instrument delegating full powers of trial and punishment as respects its subjects to a Court so constituted." These orders<sup>9</sup> bore date October 25, 1841. But in point of fact the Courts were constituted some two years later by the authority of the Governor-General's Agent himself and not by any delegation of authority from the Rajputana States. In a letter<sup>9</sup> of January 14, 1843, Colonel Sutherland said—"I had two or three years ago the honour of proposing that a Court should be formed, consisting of the Agent to the Governor-General and the representatives of the several States, accredited to him, for the adjustment of all international questions of a criminal character. Government proposed that I should enter into a negotiation with the several States through which their subjects should be rendered amenable to this Court for all criminal offences committed against their neighbours. But as some difficulties were likely to attend this negotiation, it was thought best to see what the Court could practically perform, and accordingly it was instituted." It appears from the same letter that the Vakils were empowered to summon "defendants," that is accused persons, and witnesses from any States, and that the Agent to the Governor-General enforced the orders of the Court when he approved of them. The Court described by Colonel Sutherland assembled at Ajmir, and by January 1843 similar Courts were already in operation at the subordinate Agencies. An extract from a preamble<sup>10</sup> to the rules drafted in 1861 by Colonel George Lawrence, then Agent to the Governor-General, will sufficiently indicate the state of society for which these Courts were devised:—

"The practice of affording shelter to outlaws who throw off all allegiance to their sovereign, and seeking asylum in neighbouring States, organise raids into their own country, and after committing bloodshed and plunder again find shelter on foreign soil till they again take revenge by fresh reprisals on the villages of their prince, is a question constantly brought before these Courts. Although it is not desirable that Chiefs whose oppression or rapacity drives their nobles into outlawry should be so indemnified as to find the disaffection of their subjects a source of profit or a matter of indifference, yet States who harbour outlaws either before or after they commit aggressions on another State must be held responsible for the actions of their *quasi*-subjects, who for the time enjoy their protection. Such States can always escape responsibility, if so minded, by the expulsion from their territories or surrender to their own prince of such offenders. By retaining them a State fosters disaffection and knowingly facilitates the constant disturbances of the borders, and wanton injury and violence to the villagers who suffer without cause."

The brigandage and outlawry which were so common in India before the pacification had by no means died away in Rajputana in 1861.

§ 573. Since the rules for the Rajputana Courts of Vakils were sanctioned in 1862, they have been several times amended. It is not necessary to enter on the various amendments here,<sup>11</sup> but merely to show, from the provisions of the

The jurisdiction of the Courts of rules as they now stand, that a system of Vakils is a substitute for extradition. common jurisdiction extending over groups of States is, in the cases brought before the Courts of Vakils, a substitute for a system of extradition. Complaints are made to the Political Agent of the State in which the offence is supposed to have occurred, and he decides whether the case shall be sent for adjudication to the Court of Vakils. If the complainant and the accused are the subjects of the same State and the accused escape into any other State, then "if the criminals or stolen property be pointed out by approvers or otherwise, the same must be given up to the

<sup>9</sup> Political Consultations, November 8, 1841, No. 119.

<sup>9</sup> Political Consultations, April 5, 1843, No. 29. See also enclosure of Agent to the Governor-General's No. 286—7J., dated March 21, 1862. Pro., Judicial, July 1862, No. 17.

<sup>10</sup> Pro., Judicial A, March 1862, Nos. 1-4.

<sup>11</sup> Revised rules were sanctioned in Pro., Judicial A. December 1870, Nos. 8-14. For subsequent amendments, see Pro., Internal A, June 1895, Nos. 248-250; July 1886, Nos. 389-391; September 1891, Nos. 217-223, December 1891, No. 8; and November 1892, Nos. 111-114.

accredited authorities, otherwise the State retaining persons or property of another State will be required to make good all losses." Notice of time and place of trial is given to the Vakils of the States concerned "who are responsible that the notices are served without delay on any of their master's subjects" and may "send direct for any persons subject to their respective princes without a reference to the capital." It is clear that these provisions read together supply the means of bringing before a Court of Vakils any person who, having committed an offence in his own State, takes refuge in another, or, conversely, who commits an offence in another State and returns for refuge to his own. The Courts "have power to decide all cases brought before them by the superintending officers and award punishments of fine and imprisonment, as also compensation and blood-money, according to the degree and nature of the offence, provided that the decree is confirmed by the Political Officer superintending the Court, and in cases tried by any Lower Court, subject to an appeal to the Agent to the Governor-General." The Upper Court is attached to the head-quarters of the Agent to the Governor-General, and he and that Court have, in respect of cases brought before Courts of Vakils, jurisdiction co-extensive with the whole of Rajputana. The Agent to the Governor-General can transfer any case from the Lower to the Upper Court. To him are referred for decision findings of Lower Courts disapproved by Political Agents. Cases of murder or of grievous hurt or of robbery by more than five persons may not be compounded. Sentences of death or of imprisonment for more than seven years must be confirmed by the Agent to the Governor-General. It is a striking feature of the rules that States are held liable in pecuniary penalties—"all awards of fine, blood-money or compensation must be recovered by the superintending officer of the Court from the State which is responsible and not from the individuals found guilty." It is manifest from all this that the Courts of Vakils can deal with mixed or inter-jurisdictional cases, as when the subjects of one State commit an offence in another State against the subjects of that State and take refuge in their own State or in some other, or when neither the accused nor the complainants are subjects of the State in which the offence has been committed and the accused are found in some other State. A system of extradition pursues fugitive offenders into alien jurisdictions and determines the State by whose Courts they shall be tried. The Rajputana system provides common tribunals on which the States concerned are represented and which can summon and try fugitive offenders in whatever Rajputana State they may be found.<sup>12</sup>

§ 571. As in Rajputana, so also on the border between Rajputana and the northern States of the Bombay Presidency

Extradition on the Rajputana and northern States of the Bombay Presidency  
Bombay border. inter-jurisdictional cases are dealt with partly by the methods of extradition and partly by a Court of political jurisdiction so constituted as to meet the requirements of a very primitive state of society. As we shall show below, the Bombay Government in 1873 directed that the extradition demands of Political Agents should be met by Native States just as the extradition warrants of Political Agents are executed in British territory. The Political Superintendent of Pahlampur proposed in 1875 and 1876 that this procedure should be adopted as between Rajputana States and the adjacent Native States in the Bombay Presidency. Mr. Alfred Lyall, the Officiating Agent to the Governor-General, Rajputana, agreed on the understanding that in accordance with the general extradition rules, the officer to whom surrender might be made should hear what the accused had to say before making him over to the State Courts and should be responsible that he should receive a fair trial and a proper sentence. Mr. Lyall further understood that the demands would usually be made only for the surrender of heinous offenders. "It will be remembered," he said, "that certain Courts have already jurisdiction upon this border for adjudication of complaints and charges among subjects of different States. The Marwar Court of Vakils takes cognizance at Abu of Pahlampur cases, and the Border *Panchayats* decide cases among the Border Bhils. But although these Courts can punish at discretion, it must be allowed that they are mainly used for awarding fines and compensation; and whenever

<sup>12</sup> This summary is based on Rules VIII, XXV, XXXI, XXXVIII, XLIII, XLIV, XLVII, LXV, LX XVI and LXXX.

a heinous offence is committed it is very essential that the offender should be seized and surrendered for immediate trial. Nevertheless there are certain classes of offences, as, for example, affrays and raids among tribal Bhils, which are still best dealt with by the Border Courts, and the Political Agents should settle, in consultation over any particular case, whether the accused ought at once to be surrendered to a Native State, or whether they would try the offence at the Court of Vakils or Border *Panchayat*." These views were accepted by the Government of India;<sup>13</sup> and Mr. Lyall simultaneously submitted revised rules for the Border *Panchayats* which were likewise approved.<sup>14</sup>

§ 575. A double system was thus established, namely, that the Political Agents on either side of the border should demand the surrender of heinous offenders, but that certain peculiar cases should be reserved by consent for the Courts of Vakils and the Border *Panchayats*. The rules for the Border *Panchayats* prescribe that the Court shall consist of the two British Officers, who may be in political charge of the States concerned, but with power to refer any case or cases to local *Panchayats* of persons on the spot. The Court hears all complaints of offences, including the abduction of women, brought by one State or its subjects against another State or its subjects. The State within the limits of which an offence is committed is held primarily responsible for the arrest of the offender, and for the restitution of property, or the payment of such compensation to the complainant as may be awarded by the Court. A scale of compensation is laid down for wounding, abduction of women, and kidnapping, and for live-stock. In cases of murder the rules require surrender for trial, the State concerned being, in default of surrender, liable to fine. In cases generally a traced offender must be surrendered or brought before the Court or the State where he is found must pay compensation. If an offender is followed in hot pursuit from the State where the offence has been committed into another State, or if he be subsequently discovered, or any part of the stolen property be found, in another State, the responsibility for his arrest and for the restitution of the stolen property is thereby removed from the State first held responsible. When cases come on for hearing the States concerned must produce all parties required. There is no appeal against decisions in which the two Political Officers of the Border Court concur, but if they differ the case is referred to the Agent to the Governor-General for his orders. Decisions of the local *Panchayats* in cases referred to them by the Political Officers are final. These provisions show that here, as in Rajputana generally, the common jurisdiction of a specially constituted Court extends to a number of States in certain classes of cases; and so far as it is operative supersedes within its own range the necessity for extradition. One State does not surrender a fugitive offender to another State for trial by the Courts of that State; but any State in which an offender has taken refuge has to bring him before the Border Court which exercises a common political jurisdiction in the Border States generally.

§ 576. The rules which in many instances have been sanctioned for extradition between Native States are generally of a simple character and well devised to serve the ends of justice by avoiding elaborate and dilatory procedure. In the South-Eastern Punjab there is an outlying patch of State territory consisting of the small State of Loharu, the Dadri *pargana* of Jind, the Narnol *pargana* of Patiala, and a part of the Dujana State. This tract is bounded by Jaipur territory on the west and south and by Alwar territory on the south-east. In former years border offences were frequent on the Patiala-Jaipur frontier, raiders coming most frequently from Jaipur territory over the border, though there were doubtless raids and reprisals the other way. Some attempt seems to have been made to extend the jurisdiction of the Jaipur Court of Vakils to these border cases, but without success, as the Sikh States were not represented by Vakils. Various efforts were made between 1860 and 1873 to establish some system which would suit this troublesome border, but no plan worked very well, and an amendment of the rules for the Courts of Vakils made in 1865

<sup>13</sup> Pro., Judicial A, September 1877, Nos. 1-12.

<sup>14</sup> Pro., Political A, September 1877, Nos. 71-76.

and locally misinterpreted resulted in the Jaipur and Alwar officials refusing to allow the tracks of criminals to be followed into their territory. This aggrieved the Sikh States, as to follow the tracks was their best means of proof, and they were the principal sufferers. There was, moreover, a scruple of etiquette, as Patiala refused to send a Vakíl to Jaipur unless Jaipur would send a Vakíl to the cis-Sutlej States. Matters reached a climax in 1871, when 363 border cases were pending. Early in 1873, Mr. Lepel Griffin, acting on behalf of the Punjab Government, met Colonel Beynon, the Political Agent, Jaipur, and these officers, in communication with representatives from the States concerned, drew up some rules for the pursuit, arrest and extradition of offenders, which were accepted by the two Darbars and sanctioned by the Government of India. The rules comprised a schedule of extradition offences, and the principal provision as regards extradition was that "any criminal resident of one State seeking refuge, after the perpetration of any one of the offences specified, in the other State shall, without objection, be surrendered on the requisition of the authorities of the State wherein the crime was committed." The rules do not require any *prima facie* case to be established against the accused before his surrender. On the contrary, the second rule is that "whenever any resident of Patiala shall commit any of the specified crimes in Jaipur territory, and shall escape into his native State, he shall be surrendered to the Jaipur Court for trial, on the requisition of the Jaipur authorities, *without objection or proof demanded of his guilt*. In the same way the Jaipur State shall surrender any resident of Jaipur territory who, after committing any of the crimes specified in the Schedule, in Patiala, shall escape into Jaipur territory." It was further arranged that each State should carry out the processes and serve the summonses issued by the Courts of the other.<sup>15</sup> The Government of India, in conveying their approval, directed that steps should be taken to procure the acceptance of the rules by the States of Jind, Nabha, Loharu, and Alwar. In 1875 the Agent to the Governor-General, Rajputana, reported that the Alwar Darbar had agreed to the observance of the rules as between Alwar and Patiala and any other Punjab State touching or closely adjoining Alwar; and in 1879 the Government of India formally declared the rules to be in force between Patiala, Nabha, and Alwar.<sup>16</sup> In 1883 a proposal was considered, but not adopted, that *prima facie* evidence should be required to accompany demands for extradition under these rules. From a report made by the Punjab Government in 1884 it appears that the Jaipur-Patiala rules had then been accepted as between Jind, Nabha, and Loharu of the one part, and Jaipur and Bikanir of the other part, and that negotiations for the acceptance of the code as between Patiala and Bikanir were not complete.<sup>17</sup>

§ 577. In the course of the correspondence<sup>18</sup> in which the Government of India had expressed an opinion that no extradition rules were needed between Rajputana States, but had evinced willingness to consider the draft of such rules if the Agent to the Governor-General thought they would do good, the Governor-General in Council also observed that neither the pursuit and arrest nor the surrender of criminals in Rajputana States need be limited to the case of heinous crimes, and that if the State in which the arrest was made was willing to surrender the person arrested even in the case of a minor offence, there would ordinarily be no ground for interference on the part of the British Government.<sup>19</sup>

§ 578. In June 1882, Captain Talbot proposed a set of rules for facilitating the arrest and surrender of criminals as between the Bhartpur and Alwar States. This set of rules was based on the Jaipur and Patiala rules and took the shape of instructions to the border officials of the States concerned, thus avoiding the form of an interstate agreement. Here, again, there was no requirement for *prima facie* proof of guilt before surrender. The Government of India accorded sanction.<sup>20</sup> These Bhartpur and Alwar rules were, with the approval of the Gov-

<sup>15</sup> Pro., Political A, June 1871, Nos. 505-513.

" " " December 1872, Nos. 513-518.

" " " July 1873, Nos. 59-64.

<sup>16</sup> " " " February 1875, Nos. 208-217; and April 1879, Nos. 159-165.

<sup>17</sup> Pro. A, Political I, June 1883, Nos. 81-113, and Punjab Government, No. 189, dated May 26, 1884.

<sup>18</sup> Pro. Political A, December 1874, Nos. 42-43.

<sup>19</sup> " " " August 1878, Nos. 357-358.

<sup>20</sup> " " " July 1882, Nos. 342-347.



ernment of India, accepted as between Karauli and Bhartpur, Karauli and Dhol-Karauli, Bhartpur, Dholpur, Jaipur pur and Bhartpur and Dholpur in 1883;<sup>1</sup> and Alwar, 1883 and 1889. between Jaipur on the one side and Bhartpur and Karauli on the other side in the same year;<sup>2</sup> and in 1889 between Jaipur and Alwar as a tentative arrangement. The rules having worked well, the Government of India in 1894 sanctioned<sup>3</sup> a proposal of the Agent to the Governor-General that they should remain permanently in force as between these two States.

§ 579. Rules of a slightly different cast, framed independently of each other and of the Patiala and Jaipur model, have been sanctioned for Banswara and Partabgarh and Jaisalmir and Bikanir. The Banswara and Partabgarh rules were approved by the Government of India in August 1883. They prescribe that the requisition for surrender shall be made "through the channel of the Political Assistant's office" and supported by *prima facie* evidence of the guilt of the accused. In common with the rules referred to in the last paragraph, they contemplate the surrender of persons who may not be subjects of either of the States which are parties to the understanding. The question whether the rules ought to be applied in the case of these persons was a good deal discussed by the Government of India. The Honourable Mr. Ilbert, Law Member of Council, gave his opinion in these words: "Where it is desirable, in the interests of justice, that a criminal should be delivered up to another State, I think that the mere fact of his not being a subject of that State should not affect his liability to extradition." The sanctioning letter did not embody this view but merely expressed approval.<sup>4</sup>

§ 580. In 1891, proposals for extradition arrangements between Bikanir and Jaisalmir were, by oversight, submitted in the form of a draft agreement between the two States. The Government of India referred to the orders of 1874 and 1875 (quoted in paragraph §18), under which if rules of procedure relating to extradition are required they should be issued either as rules made by the British Government to which the States assent or as engagements between the States and the British Government. "No agreement," said the Governor-General in Council,<sup>5</sup> "should ever be entered into with a Native State except after receiving the authority of the Government of India. These instructions comprise a particular application of a principle which has been invariably asserted by the Government of India, *viz.*, that direct conventions or agreements between Native States in India should be discouraged, and that they should be precluded from entering into such relations, except with the consent and through the medium of the British Government." A suggestion was also made that the word "resident" should be substituted for "subject" where the latter word occurred, so that subjects of other States resident in Bikanir or Jaisalmir might be brought within the scope of the rules. The necessary amendments were made and the rules were sanctioned on September 3, 1891. The requisition must, under these rules, be accompanied by *prima facie* proof of guilt when the resident of one of the two States commits any of certain specified offences in the other State and returns for refuge to the State in which he resides. But if a resident of either State commits one of these offences in the State where he resides and then takes refuge in the other State, "the State applied to may, if it please, demand *prima facie* proof." *Prima facie* proof is thus obligatory in the one case, but not in the other unless specially demanded.

§ 581. There are a good many slight variations in the rules sanctioned for different localities which usually include track law and other provisions for the pursuit and arrest of offenders. The practice of the Government of India is to refrain from interfering in minute details of interstatal extradition when the local authorities are satisfied. Some inconsistencies might therefore be detected on a critical review of sanctioned arrangements; but they are probably of no consequence, and it would certainly be unwise to alter any rules that are working well merely for the sake of uniformity. We must, however, mention

<sup>1</sup> Pro. A, Political I., April 1883, Nos. 74-82.  
<sup>2</sup> Pro. A, Judicial I., July 1883, Nos. 3-8.  
<sup>3</sup> Pro., Internal A., December 1889, Nos. 86-39.  
 " " " June 1891, Nos. 202-205.  
 " " " December 1892, Nos. 97-98.

Pro., Internal A., January 1893, No. 25.  
 " " " August 1894, Nos. 376-377.  
<sup>4</sup> Pro. A, Political I., August 1883, Nos. 110-115.  
<sup>5</sup> Pro., Internal A., September 1891, Nos. 149-156.

here an important case, that of Natha Dola, Baroda and Barwani, 1882-83, which contains a clear expression of the views of the Government of India regarding

The case of Natha Dola, Baroda and Barwani, 1882-83. the requirement of a *prima facie* case in interstatal extradition. Natha Dola, a

Baroda subject, accused of having committed criminal breach of trust in Baroda territory, took refuge in Barwani, a State of Central India. General Watson, the Agent to the Governor-General, Baroda, applied to Sir Lepel Griffin, the Agent to the Governor-General, Central India, on behalf of the Baroda Darbar, to cause the extradition of Natha Dola. Sir Lepel Griffin complied with the request, but took exception to the procedure adopted by General Watson and referred the matter to the Government of India. "The question," they said,<sup>9</sup> "thus raised is one of considerable importance, for it involves consideration of the principles which regulate extradition between Native States. The Governor-General in Council has given careful consideration to the subject, and I am now to communicate to you the following observations for your guidance:—

"The procedure which is followed in Baroda, and possibly in other parts of India, is thus described by the Agent to the Governor-General in paragraphs 2, 3, and 4 of his letter No. 7660, to your address:—

"(2) When a person, whether a British subject or otherwise, commits an offence in Baroda territory, and flies into British territory, the Baroda Administration submit to me a *prima facie* case; and if the record is, in my opinion, sufficient, I issue a warrant on the District Magistrate concerned, under section 11 of the Extradition Act.

"(3) When a person, subject of an adjoining Native State, commits an offence in Baroda territory, and takes refuge in his State, I send on the record of the *prima facie* case to the Political Officer concerned and ask for his extradition.

"(4) But when the person accused is a subject of the *Baroda State*, then I examine the *prima facie* case; and if I find it satisfactory, I certify the fact to the Political Officer concerned, and request extradition without sending the record of the case, and a warrant is never issued to a Political Officer for execution in a Native State, as it would be inoperative there.'

"The procedure thus defined for extradition from British India to a Native State, being in conformity with the law of British India and with the provisions of existing extradition treaties, is approved by the Government of India.

"*Extradition from a Native State to British India, or from one Native State to another, I am to remind you, is not governed by the Municipal law of British India.* The Agent to the Governor-General in Baroda was therefore right in not issuing a warrant under that law for the extradition of the Baroda subject, who absconded into Barwani, as the process, under the circumstances, would have had no legal significance. ....

"Extradition between Native States is, as you are aware, not usually regulated by express agreement. Where there is no such agreement, all that one Native State can reasonably demand from another, and all that the Paramount Power can be expected to assist in obtaining, is such co-operation as may be consistent with the principles of international comity, applied of course with due regard to the particular circumstances of the two States concerned. It is an essential principle in extradition from British India to a Native State that a *prima facie* case should be demonstrated against the accused before his extradition can be expected; and, in the opinion of the Governor-General in Council, it is only fair and reasonable that the same rule should obtain when extradition is demanded by one Native State from another, notwithstanding the fact that the accused may be a subject of the demanding State. The procedure defined in the third paragraph of General Watson's letter quoted above is therefore applicable to all cases where extradition is demanded through the medium of the Political Officer by one Native State from another.

<sup>9</sup> Pro. A, Judicial I, February 1883, Nos. 1-6.

"But the question which more immediately concerns the Government of India is the part which its officers should take in the negotiations for extradition between two Native States. The Governor-General in Council does not desire to lay down any absolute rule on this point, but it should be understood that, *generally speaking, the attitude of the Political Officer, when transmitting an application for extradition, should be neutral*, and that he should be careful not to carry his intervention further than may be really necessary. Ordinarily, he should refrain from certifying that a suspected offender is *prima facie* guilty, and it will be sufficient if, after satisfying himself that there is nothing repugnant to justice or public policy in a demand for extradition, he merely transmits a statement of the case with the application for surrender. It must be left to the discretion of the Political authorities to give their *imprimatur* to the demand when it is necessary to do so, but a reasonable application for further information by the State from which extradition is demanded should invariably be supported."

§ 582. These orders were passed on February 9, 1883. They were not at the time addressed to the Bombay Government and they certainly do not now apply to the Bombay Presidency. Moreover they are defective, because in one place they prescribe the transmission of the *prima facie* case as always obligatory and in another place approve an exception when the surrender of a Baroda subject is demanded by the Baroda Agent. But as regards interstatal extradition outside the Bombay Presidency these orders still appear to have certain force and effect the nature of which will appear in our summary. They were addressed to the Agent to the Governor-General in Central India, where the question of interstatal extradition has a further history. In March 1889 Colonel H. Wylie, Political Agent, Bhopal, submitted some rules for the pursuit, arrest and extradition of offenders, which had been accepted by the Bhopal, Rajgarh, Nársingarh, Khilchipur, Kurwai, and Maksudangarh Darbars.

Interstatal Extradition in Central India. These rules comprised a schedule of extradition offences much fuller and more detailed than that annexed to the Jaipur and Patiala rules; and the leading provision was that "when criminals are pursued and caught red-handed, or when there is no doubt regarding the criminality of the persons accused, extradition should be mutually granted without delay or superfluous formalities. In other cases, on receipt from the State, in which the offence was committed, of sufficient *prima facie* evidence of the guilt of the persons arrested, they should be made over to that State direct without the intervention of the Agency. But when any dispute arises regarding any point connected with the extradition, a reference should immediately be made to the Agency." Mr. Henvey, the Agent to the Governor-General, noted that the rules, if approved, must be regarded as made by the British Government for observance by the States, and asked for the general approbation of the Government of India before recommending them to Gwalior and Indore. This was accorded in a letter<sup>7</sup> of April 29, 1889. It has been ascertained that the rules have been accepted by all the Darbars of the Bundelkhand Agency and by Gwalior, Dewas (senior and junior branches), Jaora, Ratlam, Sailana, Sitamañ, Piploda, Dhar, Jhabua, Ali Rajpur, Barwani and Jobat; also by Indore with some qualifications.

§ 583. In the Bombay Presidency extradition as between State and State has not been treated in the same way as in Rajputana and Central India. In the Agencies under the Government of India no attempt has been made to assimilate interstatal extradition procedure to the procedure prescribed by the Act for extradition from British to State territory. But this assimilation has been, to a considerable extent, effected in Western India by a long series of orders passed by the Bombay Government. The action thus taken came under the consideration of the Government of India in 1889 in consequence of a claim made by the Baroda State to see the papers of any *Baroda subject* to another Native State or to the British Government. It is a principle of the Act and rules that when extradition from British India is

<sup>7</sup> Baroda claim for a *prima facie* case, 1889-91.

sought by means of the warrant of the Political Agent, the question whether there is a sufficient *prima facie* case against the accused is determined by the Political Agent himself, and the Magistrate in the British district receiving a Political Agent's warrant bearing on the face of it no illegality has simply to execute it according to law. By orders passed in 1873 and 1874, the Bombay Government directed the observance of an analogous procedure in cases between State and State, and in cases in which extradition is demanded by a District Magistrate from a Native State. "It will be sufficient," so the first order ran, "for the Political Agent of the State where the offence has been committed to certify that a *prima facie* case has been made out, and it will be the duty of the Political Agent of the State in which the accused has taken refuge to cause the accused to be apprehended, through the Native State, and surrendered without any inquiry, either on the part of himself or of the Native State, into the merits of the case." To this rule one exception was made, namely, that when the accused is a subject of the State in which he has taken refuge, the papers of the *prima facie* case should be forwarded for the information of that State and of the Political Agent attached to it. Any objection to the surrender was to be submitted to Government. These orders were extended in September 1873 to cases where extradition is demanded by a British Magistrate from a Native State. In June 1874, the Political Agent, Káthiawar, having pointed out that a Political Agent cannot serve a warrant or process of a British Court in a Native State in which he has no jurisdiction, the Bombay Government ruled that "when a British Magistrate finds a *prima facie* case against an accused person being in a Foreign State, he should move the Political Agent *by letter* to procure his arrest." They added—"He may send a warrant at the same time, but that would be only to justify the detention of the accused after he has been once arrested, and made over to the Magistrate's police." In 1889, on the occurrence of a case of which the facts need not be stated, the Bombay Government cancelled the exception attached to their orders of 1873. Baroda subjects thus became liable to surrender on the demand of Political Agents of other Bombay States or of Magistrates of Bombay Districts without the communication of the papers of the *prima facie* case to any Baroda authority. The Baroda Darbar, through the proper channel, applied to the Government of India for the revision of this order.

§ 584. There is no need to enter on the details of the long correspondence

The Baroda claim admitted, 1890.

which followed. The point raised by the Baroda Darbar was finally yielded in these terms:—"The Extradition Act," said the Government of India,<sup>9</sup> "is only concerned with extradition from British India. *Extradition from a Native State is governed by treaty, or, in the absence of a treaty, by the arrangement entered into with the Native State concerned, and by the law, if any, of the Native State.* In the case of Baroda, the treaty of 1817 provides (article 9) that 'offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without delay or hesitation.' It appears that, in regard to extradition from British India to Baroda, the procedure laid down in Chapter IV of Act XXI of 1879 is usually followed, and, this being so, it is in the opinion of the Government of India not unreasonable to allow the Baroda Darbar to make a similar departure from the terms of the treaty, and to require in the case of Baroda subjects that *prima facie* evidence shall be produced in support of the demand."

§ 585. The Baroda State, it will be remembered, is under the direct control of the Government of India. In regard to the States under the control of the Bombay Government, the Government of India did not suggest any modification

of the extradition arrangements which do not run in State territory. that Government had approved. In a Resolution, however, of April 28, 1888, the Bombay Government had said—"it is not optional with British Magistrates, or conversely with Political Agents, to refuse to execute a warrant under section 12" of the Act. The Government of India pointed out that this phrase might be so construed as to imply a view of the scope of the Extradition Act inconsistent with the actual nature of extradi-

<sup>9</sup> India to Bombay, No. 1968-I., dated June 16, 1890.

tion from Native States as above described. The Bombay Government explained that they had referred to Political Agents "*attached to States in which by treaty or otherwise the law and rules are followed, as is the case in every Native State in this Presidency.*" Finally a form of warrant to be used by Political Agents under section 11 of the Act was approved, and directions were given by the Bombay Government that when extradition is sought by one Native State from another *and the accused must pass through British territory*, it is advisable that the Political Agent asking for extradition should issue a warrant in the approved form *to cover the transit through British territory*, and prevent application to the nearest British Magistrate for release from unlawful confinement.

§ 586. Incidentally the Bombay Government represented that the orders requiring the production of a *prima facie* case to support extradition demands from Baroda would do away with existing reciprocity. The British Magistrate would have no option but to obey the warrant of the Baroda Agent; but when

The authority of Political Agents in extradition matters is derived from the Paramount Power. demanding the extradition of a Baroda subject from Baroda he must show a *prima facie* case. In support of this argument it was stated that in the Extradition Act and rules "the Political Agent is regarded as an agent for the State, not for the British Government." The Government of India did not agree that there was a want of reciprocity here, because, if the British Magistrate had to show a *prima facie* case, so also had the Baroda Darbar to show a *prima facie* case to the satisfaction of the Agent to the Governor-General at Baroda before he would issue the warrant which the British Magistrate had to obey. As to the position of the Political Agent, the Government of India said<sup>9</sup>—"The preamble of Act XXI of 1879 recites that 'by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means, the Governor-General in Council has power and jurisdiction within divers places beyond the limits of British India, and such power and jurisdiction have from time to time been delegated to Political Agents.' Moreover, the definition of Political Agent in section 3 of the Act is 'the principal officer representing the British Indian Government in any country or place beyond the limits of British India.' It is therefore clear that *the authority of Political Agents in matters of extradition is derived from the Government of India as the Paramount Power, and the Governor-General in Council trusts that Political Officers do in fact regard themselves as charged with the duty of watching the interests in such cases of British subjects and others whose extradition is sought.*"

§ 587. It is probably safe to say as regards extradition between State and State, and between State and British territory in the Bombay Presidency, that

Provisions of various rules and treaties from whatever territory the extradition regarding the *prima facie* case. demand proceeds, some officer of the British Government, including the Agent to the Governor-General at Baroda in that term, has at least the opportunity, and is in most cases charged with the duty, of satisfying himself that a *prima facie* case is made out before compliance with the demand. In this connection it may be worth while to refer to some provisions of rules and treaties on the subject of the *prima facie* case. Under the Travancore and Cochin rules<sup>10</sup> sanctioned in 1873, when the person whose surrender is demanded is not a subject of the State making the demand, the requisition must be accompanied by a concise statement of the charge and evidence; but there is no provision for the establishment of a *prima facie* case in the Chamba and Kashmir Extradition rules<sup>11</sup> of 1875, which require mutual surrender "on demand." Article 5 of the Extradition Treaty, concluded with Hyderabad<sup>12</sup> in 1867, provides that in no case shall either Government be bound to surrender any person except "upon such evidence of criminality as, according to the laws of the country in which the person accused shall be

<sup>9</sup> The correspondence of 1889-1891 regarding extradition in the Bombay Presidency which is abstracted in the text is contained in the following collections:—

Pro., Internal A, January 1890, Nos. 79-92; July 1890, Nos. 233-235; December 1890, Nos. 92-100; February 1891, Nos. 222-228. The rules approved in the Proceedings of February 1891 have been extended to cases of extradition between Baroda and the Kathiawar States. Pro., Internal A, August 1894, Nos. 474-444, and November 1894, Nos. 138-139.

<sup>10</sup> Pro., Judicial A, September 1873, Nos. 1-9.

<sup>11</sup> Pro., Political A, November 1875, Nos. 104-108A.

<sup>12</sup> Aitchison, VIII, page 270.

found, would justify his apprehension and sustain the charge if the offence had been there committed." The same language is used in all the Extradition Treaties concluded with the Rajputana States<sup>13</sup> in 1867, 1868, 1869 and 1870. The fifth article of the Extradition Treaty of 1855 with Nepal is exactly to the same effect,<sup>14</sup> nor was this altered when the treaty was amended in 1866. The adoption in 1887 of the procedure of the Act in the case of the extradition of offenders from British India to the Rajputana States (see paragraph § 549 above) made no difference here, because the Political Agent has to be satisfied that a *prima facie* case exists before he issues his warrant. It follows from all this that the Government of India took no exceptional course in yielding the claim of the Baroda State in 1890.

§ 588. With that State, however, there was a treaty provision regarding extradition and the reason for making the concession was that as we had ourselves departed from the letter of the treaty, it was fair to allow a similar departure in the Baroda interest. In considering the question of the *prima facie* case we must distinguish between treaty obligations as between the British Government and Native States and arrangements for the mutual surrender of fugitive offenders as between Native States themselves. If treaty obligations exist and a party to them claims their observance, they must be fulfilled. But in inter-statal extradition promptitude in procedure facilitates the suppression of crime and there is a distinct disadvantage in multiplying preliminary inquiries. These

The case of the Rao of Kutch, 1891. remarks may be illustrated by the case of the Rao of Kutch, 1891. That case is possibly a little out of place here because it primarily relates to extradition from Native States to British territory. But it also relates to inter-statal extradition; it shows in a general way the present position of extradition with Native States in the Bombay Presidency; and it afforded an opportunity for some important remarks bearing on several subjects noticed in this Chapter.

The effect of the orders issued by the Bombay Government in 1888 and 1889 was to require Native States in that Presidency to surrender fugitive criminals on receipt of a certificate that the issue of a warrant by a competent British Court, or the demand for extradition made by one Political Agent through another Political Agent upon the Native State, was supported by a *prima facie* case against the supposed fugitive offender. The Rao of Kutch submitted a memorial protesting against the orders, and it appeared that many of the cases in which he had been required to dispense with *prima facie* evidence were cases of extradition demands by Political Agents, presumably on behalf of other States. In the course of their discussion of the memorial the Bombay Government argued that the principle of exact reciprocity could not be admitted and, as an example, said—"The British Government is in India the agent of Parliament, and if, as only recently happened, a fugitive from Adelaide or a fugitive from Germany lands in Bombay, and if he were to escape to Mandvi, the British Government would not hesitate to insist on his surrender by the Rao of Kutch."

The Government of India considered that the Rao had no just cause of complaint. "The interlacing of jurisdictions," they said, "between the numerous Native States and British territory in the Bombay Presidency makes it impossible in such matters to draw any parallel between these Native States and others situated elsewhere. Experience has shown the Government of Bombay that adherence to a rule requiring the production, to support every demand for extradition, of papers constituting a *prima facie* case against the person charged, causes most undesirable delay in the surrender of offenders and offers facilities for the escape of criminals wholly disproportionate to any advantages which the observance of such formalities can possibly secure. It has accordingly been deemed necessary to require Native States to give up fugitives from justice seeking asylum in their territories upon the production of a warrant issued by a competent British Court accompanied by a certificate to the effect that a *prima facie* case has been established.

"The procedure to be observed in such cases is not laid down by any treaty, but it does not appear to the Government of India that the Rao can take any

<sup>13</sup> Aitchison, III, pages 32, 58, 71, 80, 101, 121, 161, 187, 200, 219, 226, 250, 257, 261, 292, 300, 334, 349.

<sup>14</sup> Aitchison, II, pages 167, 188.

reasonable objection to the fairness of this arrangement. As stated in your letter under reply, *complete reciprocity between the Paramount Power and its feudatories, in such matters as extradition, is by reason of their relative positions impossible, and the primary object of any extradition arrangements that may be made is not the attainment of the nearest possible approach to reciprocity, but the enforcement of effectual measures for the suppression of crime.* The views of the Government of India upon the point are very fully stated in their Resolution in the Foreign Department, No. 158-J., dated the 8th August 1871, and the correctness of the position then taken up is well illustrated by the supposed case, mentioned in your letter, of a foreign or Colonial subject taking refuge in the territory of a Native State from the jurisdiction of his own Government." Kutch, though geographically remote, could not be excepted from general rules in no way derogatory to the dignity or powers of the Rao, who was urged to accept the Bombay decision without further question.<sup>15</sup>

§ 589. When a State for any reason follows in its own extradition arrangements the provisions of the British Act and rules as though they applied to the territory under its government, it must be understood that the Act and rules do not apply of their own force as British enactments but only by the authority of the States concerned as laws of the same *pro hac vice*. This remark must be borne

Summary. in mind in connection with the extradition arrangements reported to exist in the

Bombay Presidency and in considering the following summary of this chapter:—

(1) *The Governor-General in Council is competent to prescribe by executive order a procedure for extradition between State territory under British jurisdiction and State territory under State government.*

(2) *Extradition between Native States is not governed by British laws.*

(3) *Extradition warrants issued under the Act do not run in State territory under State government; but in cases of extradition between States it may sometimes be advisable to issue these warrants to cover transit through British territory.*

(4) *Subject to the prerogative of the Paramount Power explained in Chapter XVI by which, in the absence of express engagement to the contrary, the extradition of any person can be demanded by the Paramount Power from a subordinate State, extradition from a Native State is governed by treaty or, in the absence of treaty, by the arrangement, if any, entered into by the State concerned, or by rules applicable to two or more States approved by the Government of India and accepted by the States, and by the law, if any, of the State from which extradition is demanded. In the Bombay Presidency, however, there is a special system which has been virtually approved by the Government of India.*

(5) *The British Government is the arbiter of any dispute between one Native State and another on any question of extradition, and may require any Native State to grant extradition to any other.*

(6) *In the States of Rajputana and on the Rajputana and Guzerat border the common jurisdiction of the Courts of Vakils and of the Border Court supplies a substitute for extradition in cases of certain classes.*

(7) *But the Bombay extradition rules apply to the Rajputana and Guzerat Border States and extradition rules as between (a) many of the Rajputana States, (b) certain Central India States, and (c) certain Punjab and Rajputana States have been sanctioned by the Government of India and accepted by the States concerned.*

(8) *Extradition between States need not be limited to heinous offences.*

(9) *States may both demand and make the surrender of persons who are not their own subjects.*

(10) *Even where the British Act and the rules under it do not apply, it is a frequent rule that a prima facie case must be established against the accused before extradition is granted, especially if the accused is a subject or resident*

<sup>15</sup> Pro., Internal A, August 1891, Nos. 49-57.

*of the State upon which the demand is made; and, although a different procedure has been sanctioned for the Bombay Presidency, it is ordinarily right to support the reasonable request of a State for sufficient information before granting extradition. In many cases of extradition between States outside the Bombay Presidency, the production of a prima facie case is not required by the rules, particularly if the accused are caught in flagrante delicto, or there is otherwise no doubt of their guilt.*

*(11) Political Officers in the Bombay Presidency will be guided by special rules. Subject to what is said above, other Political Officers through whom extradition may be demanded by one Native State from another, should, as a general rule, maintain a neutral attitude. They have, however, discretion to give their imprimatur to the demand when necessary.*

*(13) The authority of Political Agents in matters of extradition is derived from the Paramount Power.*



## CHAPTER XVIII.

## SERVICE OF PROCESSES AND EXECUTION OF DECREES AND SENTENCES.

§ 590. For the purposes of this chapter (which, we may be allowed to say, from the nature of the subject is the most technical and probably the least readable in the whole work) it is necessary to distinguish between several

## Introductory.

classes of Courts of Justice. First, there are the ordinary British Courts sitting in British territory and administering the law of British India; these we will call *British Courts* or *Courts in British India*. Secondly, there are the Courts of Native States, sitting in State territory and administering the law or what stands for the law of the Native Governments: these may be termed *State Courts*. Thirdly, there are Courts established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State in India; to these Courts we will refer for the sake of brevity as *British Courts in State territory*. The expression is not always quite accurate, but we shall endeavour to use it in such a context that it shall not be misunderstood. As to the first class of Courts there is no doubt or difficulty. But the line between the second and third classes has sometimes been found difficult to draw, though most cases in which a decision was necessary have now been dealt with. Indeed, the ground we are about to traverse, equally with that which we have passed over in considering British jurisdiction in State territory, is honeycombed with legal pitfalls. Our purpose being to bring out points which are clearly settled, we shall avoid a minute examination of the whole subject in detail; and in attempting a broad and general survey deliberately pass over various insecure spots where we might easily sink deep into quagmires of legal subtleties.

§ 591. And first we will take the case of the execution of the decrees of British Courts by State Courts or officers in State territory—a case which is governed by orders passed in 1868. This case differs from that of the execution of decrees of Courts in British India by other British Courts in State territory. To

Execution of decrees of British Courts by State Courts or officers in State territory.

that case we shall come later on. What we have here to speak of is the execution of decrees of Courts of the first class, by Courts of the second class, or by whatever authority may correspond to ordinary Courts in the particular State concerned.

[In the beginning of 1865 Messrs. Grant, Smith & Co., of Calcutta, obtained a decree in the High Court for Rs. 9,449-15-4 against one Maidat Kundanmal, who had absconded to Bikanir. In January 1867 Messrs. Schiller and Moncrieff, Trustees for the estate of Grant, Smith & Co., in liquidation, requested that Government would bring the above fact to the notice of the Maharaja of Bikanir with the view of his compelling payment to be made. They stated that the defaulter was well able to pay the debt, and that they were prepared to send a man to identify him and to produce a certificate of indebtedness. They were desired to furnish an attested copy of the High Court's decree in question, which they did.]

§ 592. [Upon this the Governor-General in Council ruled that, in every case in which an application for the assistance of the Government was accompanied by a properly attested copy of the British Court's decree, the influence of the Political authorities would be brought to bear upon the Native States concerned with a view to procure execution of the decree. A copy of this order was forwarded to the Governor-General's Agent in Rajputana, with a request that he

Correspondence and orders of 1867 and 1868.

would call upon the Maharaja of Bikanir to compel the defaulting debtor to satisfy the decree. A copy was likewise forwarded to all Governments, Local Administrations, and Political Agencies for information. On receipt of the orders of Government several of the Political authorities expressed objections to the course proposed, and raised the question whether it was intended to make a reciprocal concession to Native States. A Circular was thereupon addressed to all Governments, Local Administrations, and Political Agents asking their opinion on certain instructions which the Governor-General in Council proposed to issue. After an explanation of the principle on which the decrees of one country are recognised by the Courts of another country, the Circular went on to state that there was no just reason why this equitable principle should not be adopted throughout India. The difficulty lay in the great variety of judicial practice prevailing among the Native States, and the entire absence in some of any regular Courts or system of legal procedure<sup>1</sup>

[This difficulty the Government of India proposed to meet by laying down some such rules as the following :—

- [(1) Wherever regular Courts existed the decree-holder was himself to apply to those Courts for execution.
- [(2) Where no such Courts existed the decree-holder was to submit his application to the Political representative of the British Government, who was to transmit the application to the Native Court, with the recommendation that the decree be recognised, and effect given to it in whatever way the system of administration would permit. The degree and mode in which the application should be pressed was to depend on considerations relating to the particular administration prevalent in the country and to the merits of each case, on which points the Political authority was to be the judge.

[With regard to the question of reciprocity, it was admitted that the practice should be, as far as possible, reciprocal. But the point was one of some difficulty. The British Government could not act upon the Courts except through the Legislature. It remained to be shown, however, that British Courts would refuse to recognise the decrees of regular Native tribunals, and His Excellency in Council thought that when they did so, it would be time enough to consider the point. In respect of States possessing no regular Courts and judicial system, it was obviously impossible for our Courts to take cognisance of informal requisitions based upon no legal guarantees. But here reciprocity was not offered simply because reciprocity was impossible. The remedy lay in the hands of the Native States who had only to establish regular Courts guided by the judicial principles recognised in all civilised States. And this being the case His Excellency in Council conceived that the complaint of want of reciprocity would fall to the ground.] As we shall see below under the present law a material advance has been made towards settling this question of reciprocity.

[The opinions of the officers consulted differed considerably both as to the propriety of issuing the proposed instructions and as to the possibility of attaining the end which the Government had in contemplation. After a consideration of these opinions the orders of Government were issued in the following words<sup>2</sup> :—

[" Looking to the weighty objections urged by several able and experienced officers to the adoption of the second provision of the Circular in question, to the inexpediency of subjecting Native Princes and Chiefs to the constant official pressure of the British representatives, to the irritation and complications to which such a course might possibly give rise, and to the probability that, in the end, the legitimate influence of High Civil or Military officers may be weakened or diverted from its proper scope, the Government of India is not prepared to insist on carrying out the instructions which it had previously contemplated in the interest of honest and successful suitors. In future, then, all

<sup>1</sup> Pro., Judicial A, January 1867, Nos. 17-22.  
" April 1867, Nos. 1-8.

<sup>2</sup> Resolution No. 240, dated August 27, 1868  
Pro., Judicial A, August 1868, Nos. 22-43.

Administrations and Political representatives of the British Government will be guided solely by the following instructions :—

[“The rule contemplated for cases and States where regular tribunals exist will still be maintained. Holders of decrees obtained in British tribunals must present them themselves, or by their lawfully constituted agents, for execution before such tribunals, without in any way invoking the aid or relying on the influence of the British representative. The question of reciprocity in the execution of decrees is one which the tribunals of the respective Governments must decide.

[“Where there are no regular tribunals, the Political representative will, as a general rule, abstain from putting any pressure on, or using his influence with, the Chief or the Darbar, in order to the execution of a decree obtained in British territory.

[“Nor ought this determination to inflict any real hardship on claimants who successfully have resorted to our Courts for redress.

[“In many cases where large sums of money are claimed from debtors resident in British territory, such persons, if they abscond into Native States, leave either property or partners behind them in the said British territory, against whom execution may at once be taken out; and, in all cases where plaintiffs apprehend that a defaulting debtor may abscond, or may convey away his property, the provisions of Act VIII of 1859,<sup>3</sup> regarding the attachment of property while a suit is pending, afford to all litigants, who are properly alive to their rights and position during litigation, a fair and adequate security against eventual loss by evasion or default.

[“There may occur, however, the Governor-General in Council observes, some flagrant cases in which a defaulting and absconding debtor possesses large means within the limits of Native territories, in which the default and evasion may be marked by acts of gross fraud and flagrant dishonesty, and in which by deceit or artifice he may have reduced the honest creditor to ruin, or have left him without the slightest prospect of redress; and there may be other peculiar circumstances which, in the judgment of the Political officer, might render interposition on his part expedient.

[“In such cases the representative of the British power may, when applied to, most properly use his discretion in pointing out to the Chief and the Darbar the special circumstances which render intervention desirable, and may urge them to compel the defaulter to discharge his liabilities. In cases of remarkable difficulty or doubt, the Political authority may, if he thinks fit, refer the matter to Government for orders before taking any action.

[ But it must be clearly understood that these cases will form the exception and not the rule, and that the Political authority will only adopt this course when he is fully satisfied that the case is distinguished by exceptional circumstances, and that the claimant has been the victim of fraud and trickery, and has, practically, no other means of obtaining his rights,

[“In such marked cases, the Governor-General in Council does not doubt that the moral influence and advice of the British official may be properly exerted, and that the Darbar will recognise the propriety of insisting that the evading debtor shall come to some satisfactory arrangement with his creditors.”]

As will be fully explained presently, the Governor-General in Council can now, under section 229B of the Code of Civil Procedure, declare that the decrees of the Civil or Revenue Courts of selected States may be executed in British India, as if they had been made by the Courts of British India. In September

Ruling of 1895 that States whose decrees may be executed in British India may be asked to reciprocate. 1894 the Bombay Government proposed to lay down authoritatively that Courts of States thus privileged must

reciprocate by executing the decrees of all British Civil Courts, whether in British India or established or continued in, or in respect of, foreign territory. The Government of India replied that the Bombay Government should proceed by obtaining the consent of the States concerned to the execution by their

<sup>3</sup> Repealed. This was the Code of Civil Procedure, now Act XIV of 1882.

Courts of the decrees of British Courts. "There will, doubtless," they said,\* "be no difficulty in obtaining this consent because if the States are unwilling to execute the decrees of British Courts, the British Government can decline to execute their decrees."

§ 593. The above account of the correspondence and orders of 1867 and 1868

Summary:

is taken with only a small addition from the Leading Cases of 1875. The summary

which may here be inserted is adopted from the same volume with a rider required by the orders of 1895:—

(1) [*Whenever in Native States,*] other than States privileged under section 229B of the Code of Civil Procedure, [*there are regularly established Courts of Justice and a trustworthy system of judicial administration, the British Government will not interfere to obtain recognition of decrees of British Courts.*

(2) [*Holders of such decrees must in such States present them themselves, or by their lawfully constituted agents, for execution before these tribunals without in any way invoking the aid or relying on the influence of the British representative.*

(3) [*In Native States which possess no regular tribunals the Political representative will, as a general rule, abstain from putting any pressure on, or using his influence with, the Chief or the Darbar in order to the execution of a decree obtained in British territory.*

(4) [*In certain flagrant cases, however, the Political authority may properly use his influence with the Chief or Darbar in question. But before doing so he must be fully satisfied that the case is distinguished by exceptional circumstances, and that the claimant has been the victim of fraud or trickery, and has practically no other means of obtaining his rights.*]

(5) [*When the Governor-General in Council has declared that the decrees of the Courts of any State may be executed in British India, that State may be requested to reciprocate by executing the decrees of British Courts.*

§ 594. In 1880 the Bengal Chamber of Commerce represented that these

Rules of 1868 left unaltered in 1880 and 1886. rules of 1868 should be reconsidered. The Government, the Chamber thought, had

placed too much reliance on the Code of Civil Procedure, and had under-estimated the ease with which traders could be defrauded. There was no difficulty as regards absconding debtors who left property or partners in British territory. But ordinarily a fraudulent debtor wishing to abscond would conceal his intention of doing so and secretly and gradually remove his property, so that when his departure became known, there would be nothing to attach. The question was again fully considered, but the decision was to take no further action.<sup>4</sup> A similar result attended a suggestion made in 1886 that the French and Portuguese settlements in India were Alsacias for absconding debtors.<sup>5</sup>

§ 595. Pursuing the subject of the execution of decrees we now come to the execution of the decrees, (1) of British Courts established or continued in State territory by Courts in British India, (2) reciprocally of Courts in British India by British Courts established or continued in State territory, and (3) of State Courts by British Courts both in State territory and in British India. On these subjects we will quote such of the provisions of the Code of Civil Procedure as relate to them; and we will then adduce some cases in illustration of the manner in which those provisions have been worked.

The Code lays down that a decree may be executed either by the Court

Provisions of the Code of Civil Procedure regarding the execution of certain decrees. which passed it or by the Court to which it is sent for execution under certain provisions. The conditions under

which a Court which passed a decree may send it for execution to another Court are then defined, and, amongst other matters, rules are given prescribing the procedure when a Court desires that its own decree shall be executed

<sup>4</sup> Pro., Judicial A, May 1881, Nos. 1-2. | <sup>5</sup> Pro., Internal A, June 1887, Nos. 58-70.

\* Foreign Department, to Bombay, No. 23083, dated July 15, 1895.

by another Court and stating the powers of a Court in executing a transmitted decree. The Code then continues:—

“229. A decree of any Court established *or continued* by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

“229-A. So much of the foregoing sections of this chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established *or continued* by the authority of the Governor-General in Council in the territories of any Foreign Prince or State to which the Governor-General in Council has, by notification in the *Gazette of India*, declared this section to apply.

“229-B. The Governor (*sic*) in Council may from time to time, by notification in the *Gazette of India*,—

(a) declare that the decrees of any Civil or Revenue Court situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established *or continued* by the authority of the Governor-General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

“So long as such declaration remains in force the said decrees may be executed accordingly.”

Section 229-A was inserted by Act VII of 1888 and section 229-B was formerly section 434. The arrangements embodied in the law are adjusted to the assumed competency of the various tribunals. There is no doubt about the competency of Courts in British India for the purpose of executing decrees. Accordingly the decrees of British Courts in State territory—Courts which are also presumably efficient—may be executed by Courts in British India generally without any special selection of the Courts or notification in the *Gazette*. Not so, as regards the decrees of State Courts, for, as implied in the correspondence of 1867-68, our Courts cannot be expected to execute their decrees without some reasonable guarantee of their probable soundness. Hence State Courts must be selected for the privilege which can be conferred under section 229-B, and this selection is affirmed by notification in the *Gazette*. As to execution under section 229-A of decrees of Courts in British India by British Courts in State territory, it only needs be said that some of these Courts have not adequate means for executing transmitted decrees.

The words “*or continued*” printed above in italics in sections 229 and 229-B were added by Act VII of 1888. It will be observed that they also occur in the new section 229-A.

§ 596. It will be convenient to copy here certain provisions of the Code of Civil Procedure relating to the service of summonses, because the subjects of the

Provisions of the Code of Civil Procedure as to the service of summonses in certain cases. execution of decrees in or transmitted from State territory and of the service of summonses under similar circumstances

have been treated to a great extent in the same proceedings of Government.

As to the service of British Indian summonses in State territory through a British officer or Court, the Code says:—

“90. If there is a British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor-General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant, and, if the Resident, Agent, or Superintendent or the Judge of the Court returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.”

A later section deals with the service of foreign summonses by Courts in British India :—

“650-A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established *or continued* by the authority of the Governor-General in Council, or that the Governor-General in Council has by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

“The Governor-General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.”

In this section also the words in italics “or continued” were added by the Act of 1888.

§ 597. Some correspondence with the Bombay Government of the years 1880 to 1885 inclusive illustrates the difficulty of determining what Courts have been established in State territory by the Governor-General in Council, the manner in which that difficulty was at one time avoided, and the considerations which are likely to influence the Government of India in extending to State Courts the privileges which can be conferred upon them under the Code of Civil Procedure.

On March 12, 1880, the Government of India notified<sup>6</sup> that 87 Courts established in Political Agencies under the Bombay Presidency were “recognised” by the Governor-General in Council for the purposes of section 229. As already pointed out no notification is necessary to give a Court the benefit of that section. If a Court is established or continued in State territory by the authority of the Governor-General in Council the decrees of that Court may be executed by Courts in British India; and whether any particular Court is so established or continued is a question of fact. It was, however, supposed that the notification was desired by the Bombay Government with reference to section 37 of the Evidence Act (No. I of 1872), which provides that when a Court has to form an opinion as to the existence of any fact of a public nature, any statement of it or notification of Government appearing in the *Gazette of India* is a relevant fact.

§ 598. About this time the Bhaunagar Darbar refused to serve British summonses so long as British District Courts had no power to serve Bhaunagar summonses. The Bombay Government then obtained promises of reciprocity from various States and moved the Government of India to give currency to the summonses of a very large number of the Courts of Native States which had promised reciprocity. This was to be done by a notification under section 650-A. The Government of India replied that under section 90 *a Court desiring to have its summons served in a Native State can send it to the Political Agent accredited to that State and, they said, “it is his duty as the representative of the Paramount Power to move the Darbar to serve it. This is a courtesy which the Government have always expected and received from States under its political supervision. Accordingly the object of section 650-A of the Civil Procedure Code was not so much to gain reciprocity of action as to recognise and co-operate with Native States possessing properly constituted Courts of Justice. . . . In pursuance of this policy the Government of India have no objection to the proposed interchange of the reciprocal service of summons in the case of States with an organised administration of Civil Justice, but in the more backward States there is no such real parity of institution as is essential to the proper working of the system.”* The Bombay Government was asked to revise the list of States accordingly.<sup>7</sup> They submitted a revised list and the Government of India observed that it comprised the Courts of several Political Agents. In regard to these Courts no notification appeared necessary. They had been “if not directly, at any rate

Pro., Judicial A, March 1880, Nos. 43-50.

<sup>7</sup> Pro., Judicial A, March 1880, Nos. 37-42.

indirectly, constituted by the Governor-General in Council through the power which is delegated by the Supreme to the Local Government." As will appear below, this position was extremely doubtful, though the doubt has now been removed by legislation and the action taken under the revised law. The Government of India also asked for some further assurance as to the competency of the State Courts. The Bombay Government revised their list again, but it still contained no less than 251 Courts belonging to some 41 States. The Government of India explained that the provisions of section 650-A had not yet been extended to the Courts of any Native State but Mysore, the circumstances of which were quite exceptional, inasmuch as the administration of justice was still conducted there on the plan settled while the State was under British administration, and was supervised, and to some extent carried on, by trained English Judges. They were unwilling to concede reciprocity on the very large scale proposed. The letter\* under date July 7, 1882, continued—"The Governor-General in Council has, however, no desire unnecessarily to check the progress of an experiment which may have good effects in encouraging the Courts of Native States to attain an improved standard of efficiency and regularity in their procedure. For the reasons above stated, he considers it unadvisable to make the privilege of reciprocity general, and he would much prefer to see the proposed experiment introduced by degrees, and extended only in so far as its extension might seem to be warranted by success in its earlier applications, and by the efforts of Native States to merit the concession of reciprocity. But he will be quite ready to consider the case of any particular Courts which, on account of their proved efficiency, their proximity to British territory, or other good reason, it may be desirable in the interests of justice to include in a scheme of reciprocity; and I am to invite a reconsideration on this basis of the proposals made by the Government of Bombay."

Here the correspondence regarding summonses paused for a time. In what follows we will cite section 229-B in place of the similar section 434 for which it was substituted in 1889; and it must be remembered that until the passing of the Act of that year the words "or continued" had not been inserted in certain places which we have indicated.

§ 599. In the list of eighty-seven Courts "recognised" on March 12, 1880

Correspondence regarding execution (see paragraph § 597), was the Court of the of decrees, Bombay, 1883-1884. Karbhari of Phaltan. The office of Karbhari was replaced by a Joint Administration, the Chief of Phaltan, owing to bad health and indebtedness, having made over the management of his State to two Joint Administrators, namely, his son and a nominee of the Bombay Government. In February 1883 the Government of India were asked to "recognise" the Court of the Joint Administrators instead of the Court of the Karbhari. Thereupon it was held in the Legislative Department that the applicability of section 229 depended on the question of fact whether the Court had or had not been "established by the authority of the Governor-General in Council." Apparently the Court of the Joint Administrators had not been so established, and the proper section to apply was therefore section 229-B. Some of the Courts in the list of 1880 had probably not been so established and, if so, it might be revised. The Government of Bombay were addressed in this sense, and were asked to bear in mind the remarks made in the letter of July 7, 1882, on the question of summonses.\* They said in reply that it was necessary to determine what Courts in Native States are to be regarded as established by the Governor-General in Council for the purposes of the law. The Government might establish Courts in two ways: *first*, on their own behalf as the Paramount Power, as, for instance, in Kathiawar, where the Courts of the Political Agent, his Assistants and Deputy Assistants and the Thanadars decided interstatal disputes and exercised residuary jurisdiction; and, *secondly*, on behalf of Native States when their affairs came under the direct administration of Government in consequence of the minority or misconduct of the Ruling Chiefs, or for some other reason. In very backward States under Government management, entirely new Courts might be established; in less backward States, the existing Courts might be continued and improved and perhaps supplemented by fresh Courts. In a State under the

\* *Proc. Judicial A*, February 1882, Nos. 13-15.

\* *Proc. A, Political I*, April 1883, Nos. 136-138.

*Proc. A, Political I*, July 1882, Nos. 37-39.

" " August 1883, Nos. 110-111.

management of a Political Agent or Joint Administration, the administration of justice would be brought up to the standard of Non-regulation British Territory; and its Courts, so long as the management might last, would be such that their summonses might properly be served and their decrees executed by Courts of British India. The list of March 1880 was framed on the principle of including all Courts established or maintained by the authority of Government, whether falling within one or other of the above-mentioned categories.

§ 600. On this letter coming under consideration, the Foreign Department noted, in addition to the Mysore precedent already cited, the precedent of Kuch Behar; for when that State was under British management during the Chief's minority, decrees of its Courts were declared to be capable of execution by British Courts. It was further observed that the Bombay categories did not include Courts in Cantonments in Native States or Courts in other places in State territory where the British Government has territorial jurisdiction, such as various Railways, the Civil and Military Station of Bangalore, Abu, the Residency Bazars at Hyderabad, the Indore Residency limits, the Mewar and Marwar portions of Ajmir-Mhairwara, and the Hyderabad Assigned Districts. Other questions, to which we need not refer, were discussed by Mr. (now Sir Dennis) Fitzpatrick; we may mention, however, that he drew attention to the difficulty, since removed by legislation, that it was very doubtful whether Courts established in State territory by the Government of Bombay could be held to be Courts established by the Governor-General in Council. Finally, the whole of the difficulties with which the case abounded were avoided by a certain form of notification. On examination of a list of Courts sent up by the Bombay Government to be notified in this form, it was supposed that the letter of July 1882 had induced that Government to believe that the Government of India wished to exclude from the privilege of reciprocity all Courts which were not under British control and supervision. The Government of India explained that they were willing to concede reciprocity to Native, *i.e.*, State Courts in cases where it was merited. The Kolhapur State Courts were then

*Service of summonses again referred to.* included and the Bombay Government pointed out that the service of a summons issued by a State Court involves much less risk of injustice than the execution of the decree of such a Court; and therefore that if the privilege of having their decrees executed is conceded to any Courts of Native States, the smaller privilege of having their summonses served may also be safely granted to them. This view was practically accepted by the Government of India and two notifications were published. Attached to them was a comprehensive list of Courts which either fell under section 229 or might with propriety be brought under section 229-B. The notifications conferred the privilege as to execution of decrees and service of summonses mentioned in sections 229-B and 650-A upon those Courts entered in the list which had *not* been established by the authority of the Governor-General in Council. Those Courts which had been so established enjoyed those privileges already; but the mention of them in the list did no harm, while the difficulty of determining by definition or designation what Courts had been established by the authority of the Governor-General in Council was avoided, because the doubtful cases were included in the notification and thus obtained the benefit of the one section if they should be held to be not entitled to the benefit of the other.<sup>10</sup>

§ 601. In the already mentioned case of Mysore the execution of decrees was dealt with in the same way as the service of summonses. Before the rendition,

*Decrees and summonses of Mysore* the summonses or decrees of the Mysore Courts, 1882.

Courts were served or executed in British India. After the rendition it was supposed that these Courts had previously derived their authority from the Governor-General in Council and had now ceased to do so; but the Courts being the same in constitution and under the same superintendence they were restored to their former supposed footing by appropriate notifications in the Gazette.<sup>11</sup> By certain Mysore enactments of 1884 and 1887 and by certain notifications of the Government of India of 1887

<sup>10</sup> Pro. A, Judicial I, August 1884, Nos. 24-26.  
 Internal A, November 1884, Nos. 162-164.  
 April 1885, Nos. 121-125.

<sup>11</sup> Pro., Judicial A, January 1882, Nos. 13-16.



arrangements were made for the reciprocal service of summonses and execution of decrees as between the Mysore Courts and the Civil Courts of the Civil and Military Station of Bangalore. But the details of these arrangements do not illustrate any principle of importance and need not be described.<sup>13</sup> As we shall see below, the privileges of the Mysore State Courts were extended by certain notifications of March 1889.

In 1878 before the rendition a notification issued by the Chief Commissioner of Mysore under the authority of the Government of India provided that  
 Execution of British processes in the processes of Civil Courts in British Mysore territory. India should be executed in Mysore as if they had been issued by Courts in Mysore. This notification is still in force; for it is included in the Schedule of Acts and rules in force in Mysore which was annexed to the Instrument of Transfer. It is therefore part of the law of the State and cannot be repealed or modified except with the previous sanction of the Governor-General in Council.\*

§ 602. On December 10, 1885, the Government of India published notifications declaring that the decrees of the Appellate, District and Munsifs' Courts of  
 Decrees of Travancore and Cochin Travancore and Cochin may be executed Courts, 1885. by the Courts of British India. There was a proviso that the decrees of the Courts of Munsifs in order to acquire this privilege must be countersigned by the District Judge. The case has a certain history. It appears that up to 1854 British Courts enforced the decrees of Travancore Courts, but the practice was then discontinued on account partly of want of reciprocity and partly of the then unsatisfactory character of the State Courts. After the correspondence which ended with the Resolution of August 27, 1868, quoted in paragraph § 592 above, the Resident again urged the matter, but the Government of India were advised that legislation was necessary to enable British Courts to enforce the judgments of foreign Courts by issue of process, and in 1870 they held that legislation in this direction was inexpedient. The legal difficulty, however, was removed by the revision of the Code of Civil Procedure in 1882; and in 1883 the Government of Madras represented that the reasons which led to the decision of 1870 did not apply to Travancore and Cochin, whose legal systems were well ordered and their Courts reliable. In both State and British territory the practice had been to use the foreign decree as the basis of a suit. But the Bombay High Court had lately held<sup>13</sup> that the only mode of giving effect to decrees of State Courts in British India was by means of a notification as prescribed in section 434 (now section 229-B) of the Civil Procedure Code. Most of the decrees for execution in British India would be money decrees for small sums obtained in the Courts of Munsifs. The Resident suggested that the District Courts should examine these decrees and certify them as proper for execution by Courts in British India. Hence the proviso in the notifications. It was observed that a qualified declaration was not apparently contemplated by the framers of the law; but it was held that there was no objection to it, and the proviso was inserted accordingly.<sup>14</sup>

§ 603. It is worth while to add here some account of the discussion of 1869-70 which led at that time to the rejection of the proposal to give effect to Travancore and Cochin decrees through Courts in British India, because what was then said explains very clearly the policy of the present law. The Legislative Department held that in the absence of legislation a decree made in one State could  
 Reasons why legislation was not take effect in another only through the undertaken in 1870. sanction accorded to it in the country in which it was to be executed. This sanction might be given in two ways. The local Judge might either (1) pronounce a new judgment in favour of the former party in a suit brought on the former judgment, or (2) declare the foreign decree to be entitled to execution within his jurisdiction. The first of these methods was in use in England, the Colonies, British India, and the United States.<sup>15</sup> The second method is used in many parts of the Continent

\* Pro., Judicial A, November 1891, Nos. 1-2, Appendix B of Volume II, Article 19; Macpherson's Lists, Madras and Mysore, page 62.

<sup>13</sup> Pro., Internal A, April 1867, Nos. 170-175 and September 1867, Nos. 43-45.

<sup>14</sup> Bhavanshankar Shirakram vs. Pinesdri Kalidas, 6, I. L. R., Bom., H. C. P., 292.

<sup>15</sup> Pro., Internal A, December 1885, Nos. 92-102.

<sup>15</sup> Kent, Commentaries, II, 120. But as regards British India see the Bombay ruling, 6, I. L. R., H. C. P., 292, quoted above, and the ruling of the Madras High Court of a different tenor, 6, I. L. R., Madras, page 191; also 7, I. L. R., Madras, page 195.

of Europe, where the judgments have mutually the force of *res judicata*.<sup>16</sup> If the Native States were like the States of the Continent of Europe, all possessed of an advanced civilisation, with a regular legal procedure, and with Courts presided over by learned and honest Judges, there would be little difficulty in adopting the second method, which would certainly save both time and expense. Before executing a foreign judgment, as the law then stood, a Judge of a Court in British India should be satisfied that the judgment-debtor had notice of the process of the Foreign Court, and that the judgment was really delivered and not fraudulently obtained, was *in personam* and for an ascertained sum, and was pronounced by a competent Court under a law and procedure consonant with natural justice. All these matters might safely be assumed by a Judge on the Continent of Europe in the case of a judgment pronounced by any Court on the Continent. Not so in the case of judgments pronounced by the Courts of Native States. Did our Courts enforce these judgments otherwise than on suits brought, fraudulent decrees might be obtained against residents in British India. The case of the enforcement of the decrees of the Courts of British India in Native States differed widely. Here we might always assume that the Courts had acted honestly, and generally that their judgments were in accordance with natural justice. The rules of 1868 thus appeared both practical and equitable; and the Legislative Department considered that legislation was inexpedient.

§ 604. The general soundness of these views was not disputed by Lord Napier of Merchistoun, the Governor of Madras, who was consulted by the Viceroy, Lord Mayo. "I would, of course," wrote Views of Lord Napier of Merchistoun. Lord Napier, "decidedly object to any general Act giving effect to the decrees ..... and I would also object to any *convention* between particular Native States and the English Government in India giving currency to native decrees here and to English decrees there as a measure of reciprocity, for such a course would place the contracting parties on a footing of equality repugnant to the policy of our Government. It seems to me, however, that in particular cases the British Government might by proclamation under an Act grant the privilege alluded to, to the decrees of Native Courts in States in an advanced state of civilisation and good government, without any derogation of dignity or any admission of equality, and that such a voluntary concession might have the most salutary effect on the administration of the Native State so favoured." Perhaps Lord Napier might have added on the administration of other States also; for other States would be encouraged to earn the same privilege by judicial improvements. The suggestion of Lord Napier has been in substance adopted in section 229-B (formerly section 434) of the Civil Procedure Code.<sup>17</sup>

§ 605. In several instances arrangements of mutual convenience relating to decrees or summonses have been made otherwise than under the Code of Civil Procedure, as between State and British territory or as between State territory under State Government and State territory under British jurisdiction. To take

Decrees and State demands.—Secunderabad, Hyderabad Residency Bazars and Nizam's City and Suburban Courts, 1884. the latter case first, rules were framed in 1883 authorising the Cantonment Magistrate at Secunderabad and the Superintendent of the Hyderabad Residency Bazars

to execute and realise, against the property of any person residing in, or possessing property within, the local limits of their respective jurisdictions, civil decrees, original or appellate, passed by the Nizam's City and Suburban Courts, and State demands preferred by the Nizam's Government; provided that the execution or realisation of such decrees or State demands had been approved and directed by the Resident. Reciprocally it was provided that the civil decrees of the Cantonment Magistrate and Superintendent and State demands of the British Government, arising within the Cantonment of Secunderabad or the Hyderabad Residency Bazars, might be forwarded through the Resident to the Nizam's Government for execution or realisation. By subsequent correspondence it was arranged that execution of the decrees should be claimed only within the jurisdiction of the Nizam's City and Suburban Courts. State demands were restricted to "items of revenue or other incomings connected with land revenue, water-rates, abkari or customs; or debts due on contracts for the farm or collection of the same between individuals and the Government of the Nizam on the

<sup>16</sup> Westlake, *Conflict of Laws*, p. 862.

<sup>17</sup> Pro., Judicial A., October 1869, Nos. 1-2.  
January 1870, Nos. 8-9.

one hand, or the British Government on the other; or fines or forfeitures leviable from such contractors or their sureties." A proposal to include fines in criminal cases was rejected. In a letter to the Resident the Government of India pointed out that "it would not be open to the Magistrate or Superintendent in any way to go behind or to question the Resident's order for the execution of the decree or State demand. The efficacy of the process would lie, not in the fact of its connection with a decree of a Civil Court, but in the fact that its execution had been directed by the Resident." The Governor-General in Council thought it unnecessary to insert a provision to this effect in the rules, but considered it important that there should be no misunderstanding on the point. It will be observed that the Governor-General in Council here acted, not by legislation but by executive order in virtue of his power and jurisdiction in State territory. The rules received the concurrence of the Nizam's Government and were sanctioned<sup>18</sup> on October 25, 1884. No doubt an exception was here grafted on the principle of the rule of 1868 that save in flagrant cases Political officers must not use their influence to obtain the execution of decrees of British Courts by State Courts. Though the Resolution of 1868 did not specifically refer to British Courts in State territory, the language used would probably include them, and, at any rate, the principle of non-interference would clearly apply to their decrees. But the exception was fully justified by the position of the Cantonment and Bazars as enclaves in State territory, by their proximity to the city of Hyderabad giving rise to numerous transactions between the inhabitants of the several areas, and by a long, though vague, practice of occasional mutual assistance which the rules sought to define and affirm.

§ 606. In 1892 it was arranged with the consent of the Gwalior Darbar that the British system under which fees on processes are levied by the issuing Courts Reciprocity in fees on civil processes, only should be extended to processes issued Gwalior, Mysore and Hyderabad. by Courts in British India for service in Gwalior territory and *vice versa*. Formerly when summonses were sent for service to the Resident at Gwalior under section 90 of the Civil Procedure Code, he required the payment of fees, which, in the case of the Courts in the North-Western Provinces and Oudh, were remitted in postage stamps or by a postal money order, and similarly these Courts required the Resident to remit fees for the service in the North-Western Provinces and Oudh of processes issued by the Gwalior Courts. Under the system introduced no money passes between the Courts in any case and the inconvenience of making small remittances is avoided. The issuing Court in each case retains the fees payable on the process. This was settled without any notification under any law. Similar arrangements are in force between the Courts of the Madras Presidency and Mysore and between Courts in British India and those of the Government of the Nizam.<sup>19</sup>

In June 1892 the High Court at Allahabad inquired to which of certain processes authorised by the Code of Civil Procedure the arrangement made with the Nizam's Government was to be understood to extend. The Government of India replied<sup>20</sup> that the arrangement extended to summonses, proclamations and notices; that it did not extend to warrants of arrest or orders of attachment; and that notices of injunctions might properly be issued under the system; *within which, however, would not come the process for enforcing obedience to the injunction, if disregarded.*

§ 607. The ingenious plan of 1885, which avoided the difficulty of determining which of certain Courts in the Bombay Presidency had been established by the authority of the Governor-General in Council, was confessedly a makeshift. The matter has already been fully explained in paragraph § 600 above. The law was amended in 1888, and in 1889 the whole subject was taken up in a comprehensive way after obtaining reports from Local Governments and chief political authorities. The circular calling for these reports explained that the

<sup>18</sup> Pro. A, Judicial I, July 1883, Nos. 14-23. Foreign Department letter No. 3953-I., dated October 25, 1884. Pro., Internal A., October 1884, Nos. 826-841. Similar rules for regulating the reciprocal execution of civil decrees, realisation of State de-

mands and service of summonses between the Cantonment of Baroda and the Baroda State were sanctioned in 1890:—Pro., Internal A, January 1891, Nos. 133-160.

<sup>19</sup> Pro., Internal A, December 1892, Nos. 77-79.

<sup>20</sup> Pro., Internal A, September 1892, Nos. 100-102.

words "*or continued*" had been inserted in sections 90, 229, 229-A, 229-B and 650-A of the Code of Civil Procedure for the purpose of bringing within the operation of the sections certain Courts which had been from time to time established beyond the limits of British India by Local Governments and not by the authority of the Governor-General in Council. The intention was to formally declare all such Courts to be continued by his authority, and to make the declaration by a notification in the *Gazette of India* of a list of "Courts of Civil Judicature *established or continued* by the authority of the Governor-General in Council within the dominions of Princes and States in India in alliance with Her Majesty."

§ 608. A series of notifications was published accordingly on March 29, 1889.

Notifications of March 1889.

The first declared with reference to sections 90, 229, 229-A, 229-B, and 650-A of the Code of Civil Procedure that certain Courts, of which a list was given, were, among others, established or continued as above. This operated as a declaration that the Courts named in the list are entitled to the privileges of the Code as regards both the execution of their decrees and the service of their summonses by Courts in British India. The second notification applied to the same Courts with a few exceptions—some Courts in Bangalore and the Baluchistan Agency were omitted—the provisions of section 229-A, and thus gave to Courts in British India reciprocity in the matter of the execution of their

Execution of decrees.

decrees by the Courts named in State territory. Then followed a notification without a list—no list was necessary—arranging by general language for reciprocity in the matter of the execution of decrees as between British Courts in different places in State territory; this notification, as it operates wholly beyond the limits of British India, was issued under the Foreign Jurisdiction and Extradition Act.

§ 609. Additions have from time to time been made to the lists attached to the

Lists of British Courts in State territory.

first and second notifications, but we need not notice any of them, except the addition of the Bombay and Kashmir Courts, of which we shall say something presently. It will suffice to mention here that the first and fuller list comprised amongst others a number of Railway Courts in Rajputana and Central India, the Court of the Magistrate at Abu, many Civil Courts in Cantonments in Native States, the Courts of the Resident in Mysore and of the Civil Judge and Munsif in the Civil and Military Station of Bangalore, the Court of the Political Agent at Manipur, the Courts in certain territories administered by the Agent to the Governor-General in Baluchistan and all Civil Courts in the Hyderabad Assigned Districts.

§ 610. Two more special notifications dealt with the execution of decrees.

Privileges of Nizam's City and Suburban Courts and of Mysore State Courts.

Both operate in State territory only and both were issued under the Foreign Jurisdiction and Extradition Act. They authorised the execution (1) of the decrees of Mysore State Courts by any British Courts in State territory and (2) of the decrees of the Nizam's City and Suburban Courts by certain British Courts in Hyderabad territory. The second of these notifications followed the arrangements sanctioned in 1884 and described above in paragraph § 605.

§ 611. Lastly, three notifications, all issued under the Foreign Jurisdiction and

Service of summonses by British Courts in State territory.

Extradition Act, directed British Courts duly established or continued in State territory to serve summonses received from (1) Courts in British India, (2) other British Courts similarly established or continued in other parts of State territory, and (3) State Courts in Mysore, the Nizam's territories and in Central India generally.<sup>1</sup>

§ 612. The Courts in the Bombay States were not included in these notifications because the Bombay Government in the first instance stated its views as

The Bombay Courts included in the system of reciprocity, 1890.

to the principles upon which the lists of Courts should be framed in a letter to which we have already referred in treating of British jurisdiction in State territory. The Bombay lists, therefore, had not been prepared in March 1889, but they were published in July 1890. The list of Courts established or conti-

<sup>1</sup> Notifications Nos. 1361 to 1869-I, inclusive, dated March 29, 1889. Pro. Internal A, May 1889, Nos. 83-129.

nued by the Governor-General in Council included the Courts of Political Agents and Assistant and Deputy Political Agents in various parts of the country and the Courts of numerous Thanadars exercising British residuary jurisdiction in the Kathiawar, Mahi Kantha, Rewa Kantha and Palanpur Agencies. But the petty Courts of these Thanadars were excluded from the notification applying section 229-A and enabling certain British Courts duly established or continued in State territory to execute the decrees of Courts in British India. The list attached to this notification was confined to the Courts of certain Political Officers on the ground that it ought to include only Courts of superior constitution which had the means, by themselves or by Courts subordinate to them, of executing the decrees. The Bombay Government explained that some Political Agents had no British Courts in State territory subordinate to them and could get the decrees executed only through the State Courts. The Courts of these Political Agents were, therefore, omitted from the list.

In a letter of April 10, 1890, furnishing the materials from which the notifications relating to the Bombay Courts were framed, the Bombay Government, who had expressed somewhat similar views before (see paragraph § 600), gave the opinion that the service of summonses is a matter in which there may be much liberality, and subject to the condition that the summons should be sent through the Political Agent, they thought there was no reason why any British Court should not serve the summons of any regularly constituted Native State Court. "*It would not,*" they said, "*be for British Courts to enforce compliance with the summonses.*" We have mentioned the concession to the Mysore State Courts and to the Nizam's City and Suburban Courts of the privilege of having their decrees executed by certain British Courts. One of the notifications issued on July 2, 1890, conferred upon many State Courts in the Bombay Presidency the privilege of having their decrees executed by British Courts in State territory. The Courts so situated belonged to Kolhapur, Mudhol, Janjira, Mahi and Rewa Kantha, Sachin, Miraj (Junior Branch), Ramdurg, Sawantwari and Akalkot; and the list included a large number of State Courts which had acquired by the proceedings of 1885 the privilege of having their decrees executed in British India. Another notification<sup>2</sup> of the same date put the State Courts generally of the Bombay Presidency in the same position in regard to the service of their summonses as the State Courts in the Nizam's dominions, Mysore and Central India.

§ 613. When it was proposed in 1891 to add the Courts of the Resident in Kashmir and his Assistants to the lists attached to the first and second notifications of March 29, 1889, doubts were felt in the Foreign Department, because these Kashmir Courts had jurisdiction over certain persons only, not full territorial jurisdiction like the Courts included in the lists of 1889. One of those Courts, however, that of the Political Agent at Manipur, at one time had incomplete jurisdiction; that is, only in cases in which British subjects were defendants. It was held in the Legislative Department that the fact that the civil jurisdiction of the Kashmir Courts is not so extensive as that of most of the Courts mentioned in the lists of 1889 was no conclusive reason for excluding them from the reciprocal system. They had powers to serve their own summonses and execute their own decrees; and could therefore serve summonses and execute decrees sent to them from elsewhere. On the other hand, it was clearly an advantage that the summonses or decrees of these Courts should be capable of service or execution by the Courts of British India or by other British Courts in State territory. Notifications were accordingly issued which extended the reciprocal system to these Kashmir Courts.<sup>3</sup>

§ 614. We have now said enough and perhaps more than enough to enable us to deduce the principles upon which the Government of India usually act in arranging for the execution of the decrees and the service of the summonses of State Courts in British territory and in extending reciprocity in these matters to British Courts in India anywhere. The great intricacy of the correspondence and the highly technical character of the measures adopted at various times compel us to draw some inferences from these measures where we should have preferred adopting the express language of the Government of India could ex-

<sup>2</sup> Notifications Nos. 2179, 2180, 2182, 2183-1, dated July 2, 1890. Pro., Internal A, July 1890, Nos. 258-272.

<sup>3</sup> Pro., Internal A, July 1891, Nos. 296-297.

PLICIT decisions in point have been traced. But though this explanation seems necessary, we believe that the following summary is sound so far as it goes :—

(1) *It is expected that, as a matter of courtesy, the Darbar of a Native State, when moved in this behalf by the Political Officer, will cause the Courts of the State to serve summonses received from Courts in British India.*

(2) *There is no objection to authorising Courts in British India to serve summonses received from State Courts which are properly constituted and administered. The necessary authority can be given by notification under section 650-A of the Code of Civil Procedure.*

(3) *By the possession of a well-organised system for administering justice Native States may earn the privilege of the execution of the decrees of their Courts by Courts in British India. This privilege can be granted by notification under section 229-B of the same Code.*

(4) *When State Courts have the greater privilege of execution of decrees, there need be no hesitation in granting them the lesser privilege as to service of summonses.*

(5) *The mere service of a summons does not imply that compulsory measures may be used to compel the attendance of the witness.*

(6) *The Code privileges in regard to decrees and summonses have frequently been extended to the Courts of a State under British superintendence. It is a matter for consideration, when that superintendence ceases, whether they should be withdrawn.<sup>4</sup>*

(7) *In conferring Code privileges as to execution of decrees upon State Courts, it is permissible to make the concession conditional upon compliance with a prescribed procedure, as, for instance, the preliminary examination of the decrees of inferior Courts by Courts of superior jurisdiction.*

(8) *Arrangements of mutual convenience relating to the execution of decrees or realisation of fees on processes and, in two instances, to the recovery of State demands, have not infrequently been made, otherwise than under the Code of Civil Procedure, either as between State Courts or authorities and British Courts or authorities in State territory, or as between State Courts and Courts in British India.*

(9) *In considering whether British Courts in State territory should be required to execute transmitted decrees, the main point to observe is what facilities they have for the purpose. The mere fact that any of these Courts exercise jurisdiction over certain persons only, and not full territorial jurisdiction, is not a conclusive reason for excluding them from the reciprocal system.*

(10) *Subject to the consideration of this point, there is a strong presumption in favour of establishing or maintaining reciprocity in regard to execution of decrees and service of processes between all British Courts, whether they be situated in British or in State territory.*

§ 615. We may now pass on to the question of interchange of criminal processes between British and State territory, which rests on a basis entirely different from that which underlies the question of the similar interchange of civil processes. We will cite a few cases in which the Government of India have

expounded the law as to the interchange of criminal processes and have generally explained their views on that subject.

In 1885 two persons named Tota Ram and Panna Lal were accused of the offence of cheating, committed within the Indore Residency Bazar limits, in

Case of Tota Ram and Panna Lal, which criminal and civil jurisdiction is exercised exclusively by British officers.

Tota Ram and Panna Lal paid for goods bought by a *hundi*, which was dishonoured. They absconded to Bombay, and a warrant for their arrest was issued by the 1st class Magistrate of the Residency, directed to the Presidency Magistrate of that city. The Presidency Magistrate refused to execute the warrant because it was not shown that the Indore Residency limits are British territory; and if they were State territory, the Extradition Act applied, and, cheating not being a scheduled offence under that Act, extradi-

<sup>4</sup> As we have seen in paragraph § 601 above they were not withdrawn in the case of Mysore. Privileges as to decrees were withdrawn on the cessation of British management in the Sangli and Miraj States. Pro., Internal A, May 1890, Nos. 137-139. And privileges as to both decrees and summonses were withdrawn under similar circumstances in Phaltan, where, however, the administration was joint. Pro., Internal A, August 1885, Nos. 115-117.

tion could not be demanded. After explaining why certain proposals, here immaterial, made by Sir Lepel Griffin, the Agent to the Governor-General in Central India, could not be accepted, the Government of India went on to say :—"The law as it stands provides but one way in which the extradition of a criminal in the circumstances stated can be obtained, that is, by following the procedure laid down in section 14 of the Extradition Act. But that procedure is complicated and cumbrous and does not furnish for ordinary cases the facilities which it is your object to secure. The Government have been advised that the difficulty could be met by the issue of a notification under section 11 of Act XXI of 1879, enlarging the list of scheduled offences. Such a course would not, however, be altogether free from objection, and the Government of India would not be prepared to move in the matter unless it could be shown that cases where a person, charged before a Residency or Cantonment Court with an offence not scheduled to the Act, escapes into British territory, are likely to be numerous and cause difficulty, and it would probably be deemed necessary to make any enlargement of the list on the schedule subject to executive instructions as to the circumstances under which the provisions of the Act should be applied." The difficulty was that section 11 of the Act does not seem to contemplate the list of extradition offences being enlarged for particular States or particular Courts in State territory; though this difficulty might be surmounted by enlarging the list generally and making a rule that no Political Agent should act on the section in the case of any of the new offences, unless he were specially authorised to do so by the Governor-General in Council. As will be seen below, the Government of India now propose to legislate in a manner which will exactly meet such a case as that of Tota Ram and Panna Lal; but it has been thought worth while to quote that case here because, if the extradition procedure must be followed in order to bring an accused person out of British India before a British Court in State territory, *a fortiori* it must be followed if the Court requiring the presence of the accused person is a State Court. The warrants of State Courts manifestly cannot run where the warrants even of British Courts in State territory have no operation.

§ 616. This point is clearly brought out in a Kuch Behar case of 1886. It

Kuch Behar case, 1886.

appeared that there had always been complete reciprocity in the mutual service of processes between Kuch Behar and British India, such processes going direct from the Magistrate in British territory to the Superintendent of the State and *vice versa*, without the intervention of the Political Agent. In accordance with this practice a Deputy Magistrate in British territory issued a warrant for the arrest of a witness cited by the accused in a case before him. The High Court inquired under what authority the warrant had been issued. No authority could be produced; and the Bengal Government proposed to promulgate a general order sanctioning the existing practice. The Government of India were unable to approve of this proposal. Inasmuch, they said,<sup>6</sup> as there was "no special law or treaty in respect of extradition with the Kuch Behar State, an accused person cannot be delivered out of British India for trial in that State, otherwise than in accordance with the provisions of Chapter IV of the Foreign Jurisdiction and Extradition Act (XXI of 1879). The general order suggested would consequently have no legal effect." They added, "that *although the warrants of the Criminal Courts of British India do not run in Kuch Behar, yet, if the authorities of that State choose to give effect to them, there can of course be no objection so long as reciprocity in respect of such processes is not claimed and observed.*"

§ 616A. When Mysore was under British administration the Government of India directed that all warrants "issued in the Provinces of the British Government" should be executed by British Officers in the Mysore Commission. They subsequently ruled that Madras Magistrates requiring the surrender of criminals from Mysore should apply to the Superintendents of Mysore Divisions. Finally, British criminal processes were dealt with like

<sup>6</sup> Criminal processes of British Courts can be executed in Mysore territory.

<sup>6</sup> Pro., Internal A, January 1886, Nos. 91-96.  
Pro., Internal A, October 1886, Nos. 1-5.

British civil processes. We have noted in paragraph § 601 what was done about the latter. In regard to the criminal processes of British Courts the Chief Commissioner notified in 1878 that they were to be executed in Mysore as if they had been issued by Mysore Courts. This rule was maintained in force at the time of the transfer as part of the law of Mysore. Of course before the rendition the Governor-General in Council, as the depository of the power of the Maharaja, had authority to legislate for Mysore and the arrangement of 1878 was sanctioned by the Government of India. To an executive direction<sup>7</sup> that the processes of British India, both civil and criminal, should be respected in Mysore as they are respected in British territory was added the remark:—"It is doubtful whether complete reciprocity is obtainable without legislative action on the part of Government, and the Governor-General in Council considers that, under present circumstances, it is not desirable to resort to such action." This position is still unchanged, notwithstanding representations from the Mysore planters who are anxious that Mysore warrants should run in British territory. British processes, both civil and criminal, are served and executed in Mysore, just like the processes of Mysore Courts. But there is no provision for the service and execution in British India of criminal processes issued by Mysore Courts. Mysore demands for fugitive offenders in British territory can be met only under the law of extradition.<sup>8</sup>

§ 617. The Kuch Behar case was a case primarily of procuring the attendance of a witness and the reply covered the case of the arrest of a person accused.

**Attendance of witnesses, Bombay Presidency, 1828.** The question of the attendance of witnesses was more fully considered in a correspondence of 1888 with the Government of Bombay. Delays occurred in that Presidency when complainants and witnesses were residents of State territory. There is no provision of the law by which the attendance of British subjects can be enforced from British territory for the purpose of giving evidence before State Courts. The Bombay Political Officers were directed to invite Native States to allow direct correspondence between British Magistrates and the Magistrates or officers of the States so as to diminish the delays. The States generally demanded reciprocal treatment, and the question was whether the Government would grant it. "There might," said the Bombay Government, "be some difficulty in guaranteeing British witnesses subsistence allowance and their reasonable travelling expenses, or what is still more important, a prompt disposal of the cases in which they are summoned by the Native State Courts to give evidence. The delays in the Courts of some of the States are very serious and witnesses would be subjected moreover to risks of being tried for offences against public justice, or of contempt of Court to which they would not care to submit themselves outside the protection of British law. At the same time, there are Magisterial Courts in foreign territory, as there are Civil Courts, to which reciprocity might safely be granted. Another important point to be considered is that the withdrawal of reciprocity once conceded, as well as the refusal of it, is invidious, and that the States to which it was refused would be less likely to continue the assistance they even now render, were the distinction drawn." To this the Government of India answered<sup>9</sup>:—"The object in view is by offering reciprocal facilities to Native States to secure their more hearty co-operation in procuring the attendance before our own Criminal Courts of persons residing beyond our jurisdiction. Desirable as this end may in itself be, the Governor-General in Council is, after full consideration, of opinion that the time has not yet come when the steps suggested for its attainment can be taken with advantage. The Criminal Courts of Native States generally are, as pointed out in your letter under acknowledgment, not of such a character that the attendance of British subjects before them can properly be indiscriminately enforced, and the disadvantages of a reciprocity limited to a small number of selected Courts would, it is believed, more than counterbalance its convenience in particular cases. On the whole, therefore, the Government of India would prefer to leave matters on their

<sup>7</sup> Pro., Judicial A., March 1864, No. 34, and November 1853, No. 11. Pro., Judicial A., November 1861, Nos. 1-2. Appendix B of Volume II, Article 19; Macpherson's lists, Madras, Mysore, page 62.

<sup>8</sup> Foreign Department, No. 84P., dated June 25, 1873. Pro., Judicial A., June 1878, Nos. 20-31.

<sup>9</sup> Communications for the examination of witnesses in

criminal and civil cases are on a different footing. See Act XXI of 1879, section 19, and Act XIV of 1882, section 391; also paragraph § 620 below. The text is to some extent taken from a note, dated August 20, 1892, by Mr. Macpherson; K. W. of Pro., Internal A., June 1894, Nos. 234-252, pages 3-4.

<sup>10</sup> Pro., Internal A., March 1859, Nos. 211-212.



present footing. *Political officers will, it may be hoped, always have sufficient influence to secure the production before our Courts of residents in Native States whose attendance there is of serious importance."*

§ 618. We come now to Purcell's case which has led to certain proposals for legislation already mentioned in connection with the case of Tota Ram and Panna

Purcell's case, 1892.

Lal (paragraph § 615). Mr. Purcell lodged a complaint of defamation against the proprietor and printer of the "Evening Mail" in the Court of the District Magistrate in the Civil and Military Station of Bangalore. The case was transferred for disposal to the Court of Abdur Rahman, the Second Magistrate in that station. Mr. Purcell, after being examined, wished to withdraw from the case. But the Magistrate would not permit him to do so, and on the application of the Counsel for the accused issued first summonses and then warrants to procure the attendance of Mr. Purcell and his two daughters. Mr. Purcell and his daughters were arrested in British territory; Mr. Purcell at Muttra, where he gave bail, and the daughters at Jhansi, where they were unable to give bail. They were brought in custody to Bangalore. Their evidence was taken and they were discharged. Mr. Purcell on May 16, 1892, gave notice of an intention to sue the Secretary of State for damages, but he died on August 15, 1892, and the case dropped.<sup>11</sup>

§ 619. When Purcell's case came before the Government of India, attention was directed to the fact that the arrests were illegal. The Courts of Bangalore and British India are foreign to each other; and though the Code of Criminal Procedure has been applied in Bangalore, Bangalore warrants will not run in British territory. It appeared that in Bangalore and other similar places British Courts in State territory had been in the habit of issuing warrants to British Courts in British India, which had been in the habit of executing them. The matter has been taken up as a general one by the Government of India in the Foreign Department and a Bill and notification have been drafted<sup>12</sup> for legalising

Proposed reciprocity in service and execution of certain criminal processes by all British Courts whether in State or British territory.

the execution, as between Courts in British India and British Courts in State territory, and also as between British Courts in State territory and other similar Courts, of summonses to, and warrants for the arrest of, persons accused in criminal cases. The principle of the Bill is reciprocity between British Courts in India, wherever they may be, whether in State or British territory. The interchange of criminal processes between British Courts and State Courts is not touched by the Bill at all. A notification "in exercise of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act (XXI of 1876) and of all other powers," enabling the Governor-General in Council for the purpose is necessary in addition to the Bill because in State territory the requisite rules must be laid down for British Courts by executive order, not by British legislation.

§ 620. The Bill and notification being limited to measures for procuring the attendance of accused persons do not touch the matter, already noticed, of procuring the attendance of witnesses. As we have seen in paragraph § 617, there are objections to compelling witnesses from British territory to appear before State Courts. There are also objections to any wide extension of the system of obtaining the evidence of witnesses in criminal cases by Commission. When

Commissions for the examination of witnesses.

the evidence is so obtained the witness is not brought face to face with the accused person if in custody; nor has the presiding Judge the opportunity of observing the demeanour of the witness. And although under section 503 of the Code of Criminal Procedure, when a witness is examined on a Commission, any party to the proceeding may appear by pleader, or, if not in custody, in person and examine the witness or cross-examine or re-examine him, as the case may be, the circumstances which have necessitated the issue of a Commission might often or usually prevent the appearance of the parties. Under the British Indian law, however, Commissions may be issued by certain Criminal Courts in British India for the examination of witnesses in Native States. This is provided by section 503 of the Code of Criminal Procedure, which is to the effect that

<sup>11</sup> Pro., Internal B, December 1892, Nos. 66-78.

<sup>12</sup> Pro., Internal A, May 1894, Nos. 60-62.

such Commissions may be issued by Presidency Magistrates, District Magistrates, Courts of Session and High Courts, and that "*when the witness resides in the dominions of any Prince or State in alliance with Her Majesty, in which there is an officer representing the British Indian Government, the Commission may be issued to such officer.*" So also there is provision for the execution in British India of Commissions issued by certain Criminal Courts in Native States—probably only by British Courts in State territory, though this is uncertain. Section 19 of the Foreign Jurisdiction and Extradition Act stands thus:—"The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal<sup>13</sup> in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV, and the provisions of that chapter shall be construed as if the term 'suit' included a proceeding against a criminal; provided that nothing in this section shall apply in the case of any criminal matter of a political character." Under Chapter XXV of the Code of Civil Procedure, section 326, a Commission for the examination of a witness may be issued "to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the Commission may, subject to any rules of the High Court in this behalf, think fit to appoint." Further, under section 391, these provisions as to the issue of Commissions apply to Commissions issued by "(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or (b) Courts situate in any part of the British Empire other than British India, or (c) Courts of any foreign country for the time being in alliance with Her Majesty." It is extremely doubtful whether the last category would include the Courts which in this chapter we have called State Courts. The subjects of procuring the attendance of witnesses from British India before British Courts in State territory and of the interchange of Commissions for the examination of witnesses in criminal cases between British and State territory have not yet been fully worked out. So we will say no more upon them here except to note that in the circular forwarding for opinion the draft Bill and notification relating to accused persons inquiries have been made (1) whether British Criminal Courts in State territory have in the case of witnesses who are not British subjects, experienced any difficulty in executing Commissions received by them from Courts in British India; (2) what construction has actually been put by British Courts in State territory on the portion of section 503 of the Code of the Criminal Procedure quoted in italics above; and (3) whether British Criminal Courts in State territory have been in the habit of issuing Commissions to Courts in British India or elsewhere.<sup>14</sup>

§ 621. In summarising what we have said about criminal processes we shall endeavour to confine ourselves to points which do not seem open to doubt:—

Summary.

- (1) *To procure the attendance of an accused person before a State Court, it is necessary to follow the extradition procedure. The warrants of State Courts do not run in British territory.*
- (2) *Conversely (putting aside the special case of Mysore) the warrants of British Courts do not run in State territory which is not under British jurisdiction. But—*
  - (i) *If a State chooses to give effect to these warrants, there is no objection so long as reciprocity in respect of such processes is not claimed or observed; and*
  - (ii) *Political Officers may use their influence to secure the production before British Courts of residents in State territory whose attendance there is of serious importance.*
- (3) *There are objections to compelling witnesses to leave British territory for the purpose of attending before State Courts.*
- (4) *But the law provides for the execution in British India of Commissions issued by British Courts in State territory for the examination of witnesses in civil or criminal cases.*

<sup>13</sup> The doubt is whether these words would include a State Court. The language of section 391 of the Code of Civil Procedure cited in the text seems to imply that they would not.

<sup>14</sup> In this paragraph we have in the main followed a note by Mr. Macpherson, Deputy Secretary in the Legislative Department, dated May 18, 1887, so far as it was

agreed to by Sir A. Scoble, Law Member of Council. The note was recorded in a Mysore case which involves too much intricate detail to be stated in the text—see K.-W. of Pro., Internal A, August 1887, Nos. 58-59. The inquiries were made in Pro., Internal A, May 1894, Nos. 60-62.

(5) *And the law also provides for the issue by certain Criminal Courts in British India of Commissions for the examination of witnesses in State territory.*

(6) *Measures are in course of adoption to legalise the interchange of criminal processes against accused persons between British Courts in State territory and other similar Courts, and between those Courts and Courts in British India.*

§ 622. We will end this Chapter by briefly noticing a recent Act, No. V of 1893, passed for the purpose of legalising the execution in British India of certain capital sentences. For facility of reference we may repeat here from paragraph

Death sentences passed in the exercise of residuary jurisdiction may, in certain circumstances, be executed in British India.

§ 464 our abstract of certain provisions of the Prisoners Act, 1871, as they stood before the amendments of 1894. Under sections 16 and 19 of that Act officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdiction of the Calcutta, Madras and Bombay High Courts might give effect to any sentence or order or warrant for the *detention* of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, and Local Governments might authorise the imprisonment of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for certain specified offences: *provided that the sentences had been pronounced after trial before a tribunal in which an officer of Government, duly authorised in that behalf by the Native Prince or State or by the Governor-General in Council, was one of the presiding Judges.* But till lately no enactment authorised the execution in British India of death sentences passed by British Courts in the exercise of residuary jurisdiction; nor is this authorised by the Prisoners Act as lately amended.

In 1890 the Political Agent of the Rewa Kantha issued an order to the Superintendent of the Ahmadabad Jail in British territory for execution of a convict named Lakhma Radwa who had been sentenced to death for murder committed in State territory. The sentence was confirmed by the Bombay Government, but they, perceiving the legal obstacle to his execution in British territory, ordered him to be removed on the warrant of the Political Agent to the State territory in which he had committed the murder, and he was there executed. The Bombay Advocate-General was then consulted and gave the opinion that the infliction within British India of capital punishment under a sentence passed by an officer appointed under the Foreign Jurisdiction and Extradition Act would be legally unjustifiable; and might, in theory at any rate, expose all persons concerned therein to the most serious consequences. The Bombay Government thereupon recommended legislation on this and various other points which need not be mentioned. There was great reluctance to allow in our jails the execution of death sentences passed by Courts held in any Native States which could make proper provision for the safe custody of convicts under sentence of death and for the execution of the sentence. But many petty States, especially in the Bombay Presidency, neither could provide nor could be reasonably expected to provide for the one thing or the other. Legislation was therefore undertaken which authorises the jail officer in British India to give effect to the death warrant of a British Court "exercising in or with respect to territory beyond the limits of British India jurisdiction which the Governor-General in Council has in such territory," when there is "in such territory no secure place for the confinement of a prisoner under sentence of death or no suitable appliances for his execution in a decent and humane manner." The peculiar tribunals mentioned in the proviso to section 19 of the Prisoners Act quoted in italics above are deemed to be British Courts for the purposes of these provisions. The Act passed on these lines in 1893 gives all necessary authority in British territory; but, as in the case of the Bill described in paragraph § 619 above, the action of the British legislature, which cannot extend territorial laws to State territory, has to be supplemented by a notification issued by the executive authority of the Governor-General in Council. A notification has accordingly been published prescribing the procedure of the British Courts concerned in the matter of death sentences and promulgating a form of warrant which they are to use. Steps have also been taken to select the jails in which these death sentences may be executed.<sup>15</sup>

<sup>15</sup> *Pro., Internal A., September 1893, Nos. 181-196.*

## CHAPTER XIX.

### THE POSITION OF RULING CHIEFS AND THEIR SUBJECTS IN BRITISH TERRITORY.

§ 623. In this Chapter we shall mention the provisions<sup>1</sup> of the Code of Civil Procedure as to suits by or against Ruling Chiefs, and the objections entertained by the Government of India to the Chiefs trading or holding immoveable property in British territory. We shall also refer to the grant of honorary commissions in the British army to Ruling Chiefs, and to the employment of subjects of Native States in military service or in civil appointments under the British Government. Lastly, we shall touch slightly upon the question of the naturalisation of persons of the same class, and upon the procedure in political cases in which they or their Chiefs are concerned.

§ 624. In matters of civil law, the position of Ruling Chiefs in British territory has been to a considerable extent settled by certain provisions<sup>1</sup> of the Code of Civil Procedure. A foreign State, which has been recognised by Her Majesty or by the Governor-General in Council, may sue in the Courts of British India when the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State. Persons may be appointed by Government to prosecute or defend any suit or suits on behalf of a Sovereign Prince or Ruling Chief. Any such Prince or Chief, and any Ambassador or Envoy of a foreign State, may be sued in a British Court, but only with the consent of Government; an exception, however, being made in the case of a tenant of immoveable property holding or claiming to hold the property from the person to be sued, the consent of Government being unnecessary when the tenant sues as such. The consent of Government may be given by the Governor-General in Council or by a Local Government or Secretary to a Local Government duly authorised for the purpose, and the consent must not be given unless the Prince, Chief, Ambassador, or Envoy—

- “(a) has instituted a suit in the Court against the person desiring to sue him, or
- “(b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- “(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such possession or for money charged on that property.”

No Sovereign Prince, Ruling Chief, Ambassador or Envoy may be arrested under the Code of Civil Procedure, nor may a decree be executed against the property of any such person except with the consent of Government. A Sovereign Prince or Ruling Chief may sue and must ordinarily be sued in the name of his State, but the Government may direct that he shall be sued in the name of an agent or in any other name. In the case of a Sovereign Prince or Ruling Chief, the provisions of the Code relating to suits by or against minors do not apply.

It is not necessary to enter upon the history of these provisions. We propose merely to adduce certain leading cases which show the policy of the Government of India in regard to, first, trading; and secondly, the acquisition of immoveable property by Ruling Chiefs in British territory. As regards trading, the leading cases are those of Maharaja Holkar, 1867, and the Raja of Nahan,

<sup>1</sup> Act XIV of 1882, sections 431, 432, 433 and 464.

1874. We reproduce Holkar's case from Sir Mortimer Durand's compilation of 1875 with some alterations in arrangement.

§ 625. [ In June 1866 Colonel Meade, who was then Agent to the Governor-General for Central India, forwarded,<sup>3</sup> for the consideration of the Bombay Govern-

Holkar's case, 1867.

ment, translation of a communication from the Indore Darbar remonstrating against a writ of attachment which had been issued against certain property "belonging to the Indore State" in the Poona District. It appeared that the writ had been issued in satisfaction of a decree passed by the High Court of Bombay, the decree-holder, Dadabhai Jamsetji, being plaintiff in a suit "*versus* His Highness, Tukaji Maharaj Holkar and Kawasji Jehangirji, carrying on business in partnership at Bombay under the name, style, and firm of Sadasheo Martand." Under this designation the Maharaja had carried on "large linseed speculations," and had "not only sued and been sued, but recovered verdicts as plaintiff and had verdicts given against him as defendant." The Government of Bombay referred the papers connected with the case to Mr. Bayley, the Advocate-General, who held that the Maharaja was in the wrong. Mr. Bayley drew the obvious distinction between a Sovereign acting in his public capacity and a Sovereign acting as a private individual. Against the former no British Court could entertain a complaint. But with regard to the latter, the case was entirely different. "When a Sovereign Prince," said the Advocate-General, "chooses to embark in commercial transactions on his own account either in person or by agent, there is nothing to prevent his suing or being sued in respect of his rights and liabilities arising therefrom." ]

On receipt of this opinion the Bombay Government informed Colonel Meade that, under the law of the country and the circumstances of the case, they were unable to interfere with the action of the Courts. They also forwarded the papers to the Government of India in case the Governor-General in Council should wish to make any communication to the Maharaja regarding his "trading speculations." The reply of the Government of India expressed a strong disapproval of the mercantile transactions of the Maharaja and supported the decision of the Government of Bombay. [ "The property attached," they said, "appears to be wholly under British law and administration, and therefore, even on the ground of political expediency, His Excellency in Council sees no reason why the law should not take its course.

[ "Whatever may be the privileges which the Maharaja Holkar enjoys as head of a State holding Treaty relations with the British Government, those privileges cannot accompany him when he deserts his true position to assume the character of a trader in British territory. As a trader he has before now appealed to our laws for the protection of his private interests, and it would be most inequitable if he were now enabled to evade the execution of the same laws by falling back upon a position which he voluntarily abandoned.

[ "The Right Hon'ble the Viceroy and Governor-General in Council views with sincere regret the part taken by Holkar in this matter. The Agent in Central India will be desired to intimate to the Maharaja that, if His Highness considers any indignity to have been put on him by this decision of the Government of India, the Government of India, on the other hand, considers it inconsistent with the dignity of a Prince in Holkar's station to engage in trading speculations beyond the limit of his territories. The Agent will further warn the Maharaja that a continuance of such transactions can only terminate in a repetition of the same consequences under which His Highness now chafes. And the Maharaja in the present instance will, if he is well advised, pay up without delay the amount in satisfaction of which his property has been attached, and withdraw as soon as possible from a predicament not tending to the credit of his princely name." ]

A copy of this letter was forwarded to Colonel Meade, who replied that he had for several years past "urged His Highness to withdraw at once from a position so incompatible with his high pretensions" as that of a banker or trader. The Maharaja had in fact severed his connection with all business of the

<sup>3</sup> *Pro*, Judicial A, December 1866, Nos. 7-10.

sort beyond his own limits, though he was believed to be still a partner in one or two banking firms at Indore.

§ 626. Incidentally in the course of this case a question arose which, though not very distinctly formulated, amounted to this :—

Can a British Court recognise any distinction between the public and private property of a Ruling Chief, when the

Can a British Court distinguish between the public and private property of a Ruling Chief?

property in question is under its jurisdiction? In the Privy Council case of *the*

*Advocate-General of Bombay* versus *Amir Chand* the object was to recover from Amir Chand, a banker at Poona, on behalf of the Crown a large sum of money which had been deposited with him by the Peshwa before the conquest of that city. "The Court at Bombay"—(we here again quote Mr. Bayley's opinion)—"gave a verdict and judgment against the Crown. The Advocate-General appealed from that judgment, and the case was argued before the Privy Council on the 28th March 1879. The main ground of defence taken by the Respondent's Counsel was that part of the money was the private property (*Khásgí*) of the Peshwa and not belonging to or used by him for public purposes, and that not having been seized by the Government during the war, it could not be recovered after the termination of it. The Privy Council reversed the judgment of the Court at Bombay. In the course of the argument Lord Tenterden asked 'what is the distinction between the public and private property of an absolute Sovereign? You mean by public property, generally speaking, the property of the State, but in the property of an absolute Sovereign, who may dispose of everything at any time, and in any way he pleases, is there any distinction?' And in delivering the judgment of Their Lordships he also observed :—'Another point made, which applies itself only to a part of the information, is that the property was not proved to have been the public property of the Peshwa. Upon that point I have already intimated my opinion, and I have the concurrence of the other Lords of the Council with me in it, that when you are speaking of the property of an absolute Sovereign there is no pretence for drawing a distinction; the whole of it belongs to him as Sovereign, and he may dispose of it for his public or private purposes in whatever manner he may think proper.'"

Relying upon this case Mr. Bayley, in addition to the other reasons which he mentioned against interference in Holkar's behalf, referred to the difficulty due to "there being no distinction between the public and private property of an absolute Monarch," which he took Holkar to be. The Governor and Members of the Bombay Council took up this question and may be said generally to have held that there was at least some distinction between the public and private property of an Indian Chief. Sir Bartle Frere, in particular, thought that the "absolute sovereign" of Lord Tenterden's judgment existed only in the Arabian Nights, and said in his final minute—"I never knew a Native State in such confusion that the distinction was lost sight of, and it was owing to this distinction, which, so far as I know, is universal in all Indian sovereignty, being overlooked by us after resumption of the Raj, that some of our worst and most unpopular embarrassments at Nagpur and Satara occurred." The Bombay Government drew the attention of the Government of India to their discussion of this matter, and the Government of India replied that the judgment of the Privy Council had given the law to Indian Courts which could be altered only by legislation. The Governor-General in Council went on to say that the principle established by that judgment appeared to him (the Viceroy at the time was Lord Lawrence) to embody very good sense; and the reasons for this opinion were thus explained :—"The question for a court as regards property under its jurisdiction is not whether any distinction is drawn in Native States between the private and public property of a Prince, but whether it is possible to consider anybody, except the absolute Prince himself, as having an interest in the property. In most European States there is somebody who would be injured by the treatment of public property as private, *viz.*, the State or community governed by the Sovereign who is sued. But Holkar, there can be no doubt, has the power of treating, and, most probably, does treat, the two funds in exactly the same way.

"The Chiefs who now hold rule in India may, before their accession to power, have owned little more than a share in one village or two, or they may,

on the contrary, have been lords of large estates. The accounts of such villages, or of such estates, will, indeed, continue separate long after the Zamindar has expanded into a Prince, but the net proceeds after they reach the Prince's Treasury are seldom kept so distinct in their practical application as to be distinguishable from public or State treasure. There may be instances where a separate use for the two funds has been maintained; but the Governor-General in Council is persuaded that these must be rare exceptions from the general rule.

"The Privy Council, as their judgment is read by the Government of India, did not intend so much to question the separate existence of both kinds of property under an absolute Prince, as to point out the impossibility of drawing a line of distinction between the use which such a Prince might make of the two funds. But the fact of these funds being indifferently drawn upon by the Prince for any purpose whatever, though it necessarily was of great weight in the decision of the legal question at that time before the Privy Council, could not, in the opinion of the Government of India, affect the very different question referred to in the last Minute of His Excellency the Governor of Bombay, *viz.*, the obligation of a Sovereign power in conducting the assumption of a lapsed State not to confiscate as State property anything which may have been the private property of the lately deceased Chief. In an act of State of this kind the superior power concerned would have little difficulty in judging what was private and what public property, and would be bound to interpret liberally all claims which the family might advance to have particular objects exempted from confiscation on the ground of this distinction."

§627. The case of the Raja of Nahar was the occasion for a spirited letter from the Punjab Government, from which we shall quote at some length. In 1869 the Raja bought certain lands in the Dehra Dun, which is British territory. The purchase included a tea plantation which the Raja worked through a Manager, but the Raja paid occasional visits to the place, and was known as the owner of the plantation and directed its affairs. In February or March 1871 a tea-planter named Minto bought from the Raja's Manager tea to the value of about £3,600. Mr. Minto was at Calcutta, and in his opinion the tea delivered was not up to sample. He therefore claimed some £600 or £700 damages against the Raja, and his suit in a Court in Dehra Dun was dismissed on the ground that the Raja as an "independent Prince" was not subject to the jurisdiction of British Courts. Mr. Minto then applied without success to the Commissioner of Umballa, urging him to use his political influence. Finally Mr. Minto's Solicitors addressed the Secretary of State, who called for a report of the grounds on which the Punjab authorities considered that Mr. Minto's case was not one in which the political interference of Government could be exercised. The report was supplied in the name of Mr. T. H. Thornton, the Secretary to the Punjab Government, Sir Henry Davies being the Lieutenant-Governor. The grounds, Mr. Thornton stated, were—*first*, that political interference in such cases was opposed to the well-established practice of Government; and *secondly*, that political interference in such cases would be highly inexpedient. "As a matter of practice," said Mr. Thornton, "the political interference of the Punjab Government in cases arising between the feudatory Chiefs of the Province and British subjects is reserved for cases of public wrong, as, for instance, cases in which British subjects have been unjustly imprisoned or outraged, or in any other way criminally oppressed. It has *not* been usual to exercise such interference in cases of a purely civil nature, such as claims for debt or money due.

"The adoption of any other course would, in His Honour's opinion, be highly inexpedient; *first*, because the political machinery of this Government is wholly insufficient and unable to investigate and adjudicate satisfactorily the numerous claims which would arise should such a system be adopted; *secondly* and chiefly, because, if once the British Government undertakes to lend its aid to recover civil claims from Native feudatories, an era of unlimited credit will commence; Native Chiefs will be beset by traders, money-lenders, and speculators of every description; loans will be freely offered and recklessly taken up; extravagant purchases will be made; and, in a short space of time, there will hardly be a Native Chief in the province who will not become hopelessly in

debt,—unless, indeed, the sanction of the British Government is required for every such transaction, which will involve an amount of minute interference with the action of our Chiefs which will be most irksome to them, and undesirable on many grounds.

“Long experience has shown that the best way to prevent the grant of unlimited credit to these Chiefs is to steadily adhere to the principle *that the Government does not undertake to use its political influence to enforce payment of debts or obligations incurred by them.* This may in some few cases be productive of hardship to individuals, but a few hard cases are a far less evil than the encouragement to extravagant and reckless expenditure which would be the inevitable result of the adoption of a different policy. If, indeed, the ruin resulting from extravagance was confined to the Chief personally there would be less objection to the British Government assisting in effecting it, but unfortunately the bankruptcy of a feudatory affects not only the Chief himself but the people whom he governs, as there is no distinction in Native States between the public and the privy purse. In a word, the more you bolster up the credit of a Native Chief, the more you endanger the State’s finances and consequently the prosperity of its inhabitants.

“But, waiving for the present the last ground of objection, I am to observe that the case between Mr. Minto and the Raja of Sirmur was one specially difficult of investigation by a Political Officer. Mr. Minto complained that certain teas purchased by him from the Raja’s factory at Dehra Dun and sent to Calcutta were not according to sample. The Raja and his Manager (Mr. Mooney) stoutly assert that the teas were according to sample. To settle this question of fact it would be necessary for the Political Superintendent of the Hill States (who resides at Simla) to send for and examine a cloud of witnesses, some residents of Dehra Dun (some 200 miles off) and others of Calcutta (upwards of a thousand miles off). But how would it be possible for him to do this satisfactorily, seeing that he has no power in his political capacity to summon a single witness or to take evidence upon oath?

“While, however, His Honour is clearly of opinion that the case of Mr. Minto is not a case in which the political interference of the Government can be exercised, he thinks the law exempting his case from the jurisdiction of the civil courts might well be modified, and that the civil courts might be allowed jurisdiction where, as in the present case, a sovereign Chief has entered into trade and established a manufactory in British territory. But even in such cases the amount decreed should, in His Honour’s opinion, be recoverable only from assets existing in British territory, and not by the influence of the Political Officer.”

§ 628. The case ends,<sup>2</sup> with singular abruptness, in a letter of the Government of India asking Mr. Minto for a copy of a decision of the Dehra Dun Court which rejected his claim. So far as can be ascertained Mr. Minto never replied; nor was any answer ever made to the Secretary of State, nor did the Government of India at the time express any opinion on the doctrine of the Punjab Government as to the inexpediency of interference between trading Chiefs and their customers. But some years later when the Code of Civil Procedure was under revision it so

Amendment of the Civil Procedure Code, 1877. happened that Mr. T. H. Thornton was officiating as Secretary to the Government of India in the Foreign Department and at an interesting moment he remembered this case of the Raja of Nahan. The opinion of Mr. Thornton was asked on certain portions of the Civil Procedure Bill, in which he did not find any provision for suits against Ruling Chiefs. “The Raja of Nahan,” said Mr. Thornton, “who has a tea factory in the Dehra Dun, has been declared exempt from the jurisdiction of the Courts in respect of tea contracts made by his Manager; *quod est absurdum.*” In a further note, Mr. Thornton added—“The object I have in view is to give our Courts jurisdiction to hear and decide civil suits against Chiefs *who have property or carry on business or manufacture in British territory.* Such a jurisdiction was recognised under the provisions of the Punjab Civil Code and was exercised without difficulty, and it has been declared to exist by the Foreign Department and has been *accepted* by Maharaja Holkar, but it has been declared *not* to exist by one of the Courts of the

<sup>2</sup> Pro., Political A, January 1874, Nos. 137-139. Pro., Political A, June 1874, Nos. 21-22.



North-Western Provinces and by the Chief Court of the Punjab, and the point should, I think, be legislatively settled." The Bill on its next revision contained provisions as to suits against Ruling Chiefs which were accepted without comment<sup>4</sup> by the Foreign Department and other authorities consulted, and were in substance identical with those which have been abstracted in paragraph § 624 above.

§ 629. What we have gathered on the subject of trading by Ruling Chiefs in British territory may be shortly stated in these terms, which are nearly identical

Summary.

with those used in the head-note of 1875:—

(1) *It is inconsistent with the dignity of Ruling Chiefs to engage in trading speculations beyond the limits of their own territories.*

(2) *If a Ruling Chief assumes the character of a trader in British territory, he renders himself amenable as such to the action of British Courts of Law.*

(3) *Unless it be clearly proved that the proceeds of private and of public property held in British territory by a Ruling Chief are kept separate and applied respectively to uses of a private and public kind, it is probable that a British Court will not recognise any distinction between such private and public property so held, and that both will be considered by the Court to be liable to attachment in satisfaction of a demand proved against the owner.*

§ 630. Further amendments besides the amendments of 1877 have been

Opinion that permission to sue a Chief, on the ground that he trades in British territory, should not be granted unless the proposed suit is connected with his trading.

made in the law relating to suits by and against Ruling Chiefs, and it will be worth while to note here some points of interpretation and practice bearing on the law as amended. In 1892 Messrs. Jehangir

& Co. of Peshawar asked the assistance of Government in recovering a sum of Rs. 62,764 said to be due to the Kabul branch of the firm and guaranteed by the Amir. On the Government declining to interfere in the matter, the firm applied for permission to sue the Amir, which was refused. It was well known that the Amir through his agents traded in Peshawar in the almond produce of Kabul, but it did not appear that the accounts stated by Messrs. Jehangir & Co. had any connection with that trade. The condition in section 433 of the Code of Civil Procedure relating to immoveable property requires that the suit shall have reference to the possession of the property or be brought for money charged on the same. There is no similar limitation in the condition relating to trade, which is simply to the effect that the Prince or Chief concerned shall by himself or another trade within the local limits of the jurisdiction of the Court. Sir Alexander Miller, the Law Member of Council, held that the circumstance that the Amir was carrying on a certain trade through his agent in British India did not bring the case within section 433 of the Code, unless the proposed suit in some way related to the trading. Sir Alexander Miller admitted that no such limitation was specified in the Code, but he thought it followed from the nature of the provision, and was in consonance with the limitation imposed as to immoveable property. "It would be absurd," he said, "to make the powers of the Government of India depend upon a wholly irrelevant circumstance." In the official orders nothing was said to this effect, no reasons being given for the refusal of permission to sue.<sup>5</sup>

§ 631. As to the practice of the Government of India in dealing with applica-

Practice of the Government of India in dealing with applications for leave to sue Ruling Chiefs.

tions for leave to sue Ruling Chiefs under the law as it now stands, it is unnecessary to give the facts of the very numerous

particular cases which have arisen, and it will suffice to mention in general terms what the practice is, giving references in the foot-notes to papers from which the conclusions are drawn. In 1889 powers were delegated to Local Governments and the Chief Commissioners of the Central Provinces and Assam to sanction the institution of suits against Ruling Chiefs;<sup>6</sup> and when the local authorities thus have the necessary power, it is usual to transfer the petitions to

<sup>4</sup> Judicial B, April 1877, Nos. 10-18.

<sup>5</sup> Pro., Secret F, September 1892, Nos. 727-737.

<sup>6</sup> Notification No. 1360-I., dated March 29. 1889.

to them for disposal.<sup>7</sup> The Government of India, when themselves dealing with these applications, habitually sanction them when the condition or conditions prescribed by law are fulfilled;<sup>8</sup> though, of course, they have discretion even when the requirements of the law are met, to refuse permission, if it seems advisable to do so. In most cases where the requirements of the law are not fulfilled, permission is simply refused and no further action is taken.<sup>9</sup> But occasionally, notwithstanding the strong objections stated by the Punjab Government in the case of the Raja of Nahau (*supra*, paragraph § 627) to the use of political influence to enforce the payment of debts incurred by a Ruling Chief in British territory, the Government or Political Officers have interposed their good offices to induce a Chief to pay sums justly due. Thus in 1886 when a Chief, who shall be nameless, but who is well known at Simla, came there owing some six or seven hundred rupees to one of the Simla shops, he was privately advised by an officer of the Foreign Department to settle the bill, and did so.<sup>10</sup> In another case<sup>11</sup> of December 1891, which also it is best to state anonymously, there was a claim by some timber traders against a Maharaja for some Rs. 7,400. The merchants applied for permission to sue, which could not be granted under the law. The Government of India took no official action; but they wrote demiofficially to the proper authority. "The permission applied for," they said, "cannot be granted to the petitioners under the provisions of section 433 of the Civil Procedure Code, and they have been so informed. You will be able to judge whether it is desirable to bring the case to the Maharaja's notice with a view to his settling the demand amicably. *It is against our rule to interfere actively in such matters except in any very flagrant cases*; but it is of course desirable that Chiefs should pay their just debts, and possibly if the claim is good, and if the matter is properly put before the Maharaja, he will settle it without further trouble." When one Lalubhai Ambalal Desai sought to bring a suit "on the political side" in the Court of the Assistant Political Agent against the Thákur of Morvi for a sum alleged to be due under a bond, the Bombay Government appear to have held that the principle of section 433 of the Code of Civil Procedure was applicable to the case, and rejected the application. The matter came before the Secretary of State, who agreed that a formal suit was not the proper course. But he did not understand that the Political Agent was therefore precluded from taking action in the exercise of the control and superintendence which are proper functions of the Imperial Government. "I should," wrote the Secretary of State in a despatch<sup>12</sup> dated December 17, 1891, "be very reluctant indeed to admit any ruling that might be held to imply the result that a British subject might be barred, on grounds of technical procedure, from appealing to the British Government, for consideration of any case in which he might show *prima facie* reason for a complaint of injustice on the part of a Native Chief. It appears to me that the Political Agent should have called upon the Thákur for his explanations, and advised him to deal with the memorialist's claim as honour and justice might require."

§ 632. Two more points may be mentioned; *first*, that it is inevitable that the Courts should decide who are Ruling Chiefs for the purposes of section 433 of the Code of Civil Procedure; and *secondly*, that persons may be appointed

Appointment of recognised Agents of by Government to be the recognised Chiefs. Agents of Chiefs for the purpose not only of a specified suit, or of several specified suits, but for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf

<sup>7</sup> Pro., Internal B, April 1889, Nos. 229-230; June 1889, Nos. 177-178; January 1890, Nos. 246-251; September 1892, Nos. 112-118; April 1893, Nos. 119-120; June 1893, Nos. 137-139; May 1894, Nos. 264-265.

<sup>8</sup> Pro. B, Judicial I, February 1884, Nos. 10-11, Nos. 12-13; Pro., Internal B, September 1885, Nos. 139-142; April 1889, Nos. 205-207, Nos. 312-315; September 1888, Nos. 112-116, Nos. 144-151; October 1888, Nos. 8-11; February 1889, Nos. 67-71; Pro., External B, April 1889, Nos. 74-88; Pro., Internal B, October 1889, Nos. 122-127; December 1889, Nos. 19-26; March 1890, Nos. 167-174; June 1890, Nos. 184-202; July 1890, Nos. 255-260; June 1891, Nos. 158-166; February 1892, Nos. 61-65; Pro., Secret I, April 1892, Nos. 18-26; Pro., Internal B, May 1892, Nos. 221-232; September 1892, Nos. 71-72, Nos. 282-286. For a precedent in which leave to sue was refused, see case of the Thákur of Umetha, Pro., Internal A, August 1894, Nos. 356-359.

<sup>9</sup> Pro., Deposit I, April 1885, No. 77; July 1885, Nos. 168-172; September 1885, Nos. 95-97; Pro., Internal B, June 1887, Nos. 211-212; August 1887, Nos. 73-74; January 1889, Nos. 384-385; July 1888, Nos. 56-57; April 1891, Nos. 174-185; June 1892, Nos. 690-691.

<sup>10</sup> Pro., Deposit I, June 1886, Nos. 70-71; July 1886, Nos. 314-315.

<sup>11</sup> Pro., Internal B, December 1891, Nos. 222-223. One or two more cases of the same kind might be found, but it does not seem necessary to add to the text. A demi-official letter to Colonel Gerard, dated October 8, 1894, and at present (December 1894) unrecorded, may be read in this connection, but there is no need to abstract the case.

<sup>12</sup> Pro., Internal A, January 1892, Nos. 196-197. With these orders should be read the orders of the Court of Directors passed in 1838 and quoted in paragraph § 684 below.

of the Chief. The second point is very simple. In the former state of the law it was necessary to make a special appointment for each suit.<sup>13</sup> This was obviously inconvenient, and the necessary amendment was made by Act VII of 1888.

As to the first point, the High Court of Calcutta, in a case in which the Maharaja of Tippera was a party, referred, on February 23, 1883, to a letter of the Bengal Government, dated December 28, 1878, which stated that the Maharaja was not "an independent" Ruling Chief within the meaning of section 433 of the Civil Procedure Code. "It seems to us, however," said the Judges, "that it is for

The Courts must decide who are Ruling Chiefs for the purposes of section 433 of the Code of Civil Procedure.

the Courts, and not for the Government, to say whether or not any particular Chief or Prince comes within the purview of that section; we look upon this passage as nothing more than an expression of opinion conveyed to the Judge of Tippera, and we must add that we think it the expression of an erroneous opinion, for it has been shown to us that Hill Tippera is a Sovereign State, and that the Maharaja defendant has been formally recognised by the British Government in India. We are therefore bound to hold that he is a Ruling Chief, and that he cannot be sued in the Courts of British India, excepting under the conditions specified in section 433." Pending the amendment of the law, the Government of India directed that this decision of the High Court should be followed.<sup>14</sup> But in a later case of 1891, after the amendment of the law, it appeared that the Bombay High Court had decided that the Desai of Patri is a Ruling Chief within the meaning of section 433. The Desai is a Chief of the fifth class in Kathiawar, holding only seven villages. When powers under section 433 were about to be delegated to the Bombay Government, that Government referring to the High Court ruling in the case of the Desai of Patri proposed that the list of Chiefs in respect of whom the powers were to be exercised should not be exhaustive, but limited to those whom they had no hesitation in designating Ruling Chiefs or Sovereign Princes. This proposal was accepted by the Government of India. The reason given for the proposal by the Bombay Government was that it would be inexpedient, by publicly including in the list the names of some of the petty Chiefs, to give a handle to pretensions which would otherwise not be put forward. The Desai of Patri was excluded from the list; and thus the anomaly arose that while the Bombay Government had powers to deal with applications for leave to sue all important Chiefs in the Bombay Presidency, such applications, in respect of the pettiest Chiefs held by the Courts to be Ruling Chiefs, would have to receive the orders of the Government of India. The question was raised whether the law should be amended so as to exclude such petty Chiefs as the Desai, or 6th or 7th grade Chiefs, or non-jurisdictional Chiefs in Kathiawar from the category of Ruling Chiefs for the purposes of section 433. But the shearing away of privileges in petty States is apt to cause uneasiness in big ones, and the Government of India decided to leave the law as it stands. The decision of the Courts in the case of the Desai of Patri was practically accepted without comment by the Government of India, as they granted a certificate under section 433 consenting to the execution of a decree against him.<sup>15</sup>

§ 633. The points of interpretation and practice to which we have referred may now be epitomised.

Summary.

(1) *It is within the competence of British Courts of Justice to decide who is and who is not a Ruling Chief for the purposes of section 433 of the Code of Civil Procedure.*

(2) *In dealing with applications under that section for permission to sue Ruling Chiefs, the Government of India usually transfer for disposal to the Local Governments and Administrations concerned applications falling within the powers delegated to these authorities in this behalf.*

(3) *When the Government of India themselves dispose of the applications, they usually grant permission to sue if the conditions of the law are satisfied and, in other cases, simply refuse permission without taking further action.*

<sup>13</sup> Pro., General B, May 1891, Nos. 510-514.  
<sup>14</sup> A., General I, September 1882, Nos. 35-37.  
<sup>15</sup> Judicial, August 1884, Nos. 79-93.

<sup>16</sup> Pro. A., Judicial I, October 1883, Nos. 24-26.  
 August 1884, Nos. 65-70.  
<sup>17</sup> Pro., Internal A., May 1889, Nos. 83-120.  
 " " June 1893, Nos. 109-121.

(4) *It is, however, competent to the Government of India to refuse permission to sue even if the requirements of the law are fulfilled, and conversely if the requirements of the law are not fulfilled, it is still in the discretion of Government, for instance, in flagrant cases of wrong, to procure the payment of just debts by the exercise of political influence. But the use of this influence in cases not contemplated by section 433 of the Code of Civil Procedure is extremely rare and open to weighty objections.*

(5) *Permission sought to sue a Ruling Chief on the ground that he trades in British territory, will probably be refused, unless the proposed suit is connected with his trading.*

(6) *Recognised agents of Chiefs may be appointed by the Government for the purposes of a specified suit or of several specified suits or of all suits which it may from time to time be necessary to defend or prosecute on behalf of the Chief.*

In connection with head (4) of this summary reference should be made to the ruling of 1838 quoted in paragraph § 684 below, and to the case of Dr. Williams cited in paragraph § 686. The old ruling positively forbids a use of political influence which the later ruling allows.

§ 634. The practice of the Government of India above described affects the possession of immoveable property by Ruling Chiefs in British territory, inasmuch as permission to sue them is granted perhaps more frequently in cases connected with their property so owned than in cases of any other class. But upon the acquisition of immoveable property by Ruling Chiefs in British territory there is a good deal more to be said.

On October 7, 1891, the Government of India called the attention of Local Governments and Administrations and chief political authorities to the fact, often previously made known to most of them, that *it is the policy of Government to discourage the acquisition of immoveable property in British territory by Ruling Chiefs and personages, not being British subjects, in the subordinate States of India.* The Government of India requested that in future any proposed purchases of the kind might be referred for the orders of the Government of India, who would allow the purchases to take place only in special circumstances. These circular orders were followed by others dated June 3, 1892, addressed to the same authorities and instructing them to acquaint the Chiefs and Darbars of the various political charges with the views of the Government of India in this matter of the acquisition of immoveable property. These directions of October 7, 1891, and June 3, 1892, were confidential, and in the second communication the Government of India added that any published notification or other order likely to attract general attention and arouse comment would be undesirable.<sup>16</sup>

§ 635. We shall exemplify from several cases the grounds of this policy and the grounds of the policy noted above. The practice of the Government of India in giving effect to it. The grounds of the policy were very clearly and compendiously stated in a demi-official letter from Mr. Durand, the Foreign Secretary, to Mr. F. P. Peacock, Chief Secretary to the Government of Bengal. "The fact is," wrote Mr. Durand on September 21, 1886, "that the difficulties caused by the possession by Native Chiefs of land in our territory are sometimes serious. The Chiefs are unable to distinguish between their position as Rulers and their position as *Zamindars* or as house-holders. They become subject to our Courts and their dignity is wounded by the service of legal processes. Disagreeable discussions arise about taxation; and openings are given for unsatisfactory dealings with Government officers." These remarks<sup>17</sup> were evidently founded on some observations recorded by Mr. Aitchison fifteen years earlier which we shall quote below.

§ 636. The orders in the case of Holkar's trading speculations bore date December 29, 1866. Shortly afterwards, on January 7, 1867, Colonel Meade [was requested to bring to the notice of the Maharaja Holkar the existence of a Government lands must not be granted or sold to Ruling Chiefs.

<sup>16</sup> The circulars are Nos. 4087-4088-I., dated October 7, 1891, and Nos. 2258-2255-I., dated June 3, 1892. Pro., Secret I, October 1891, Nos. 1-2; and July 1892, Nos. 4-11.

The second circular was not sent to the Political Residents in the Persian Gulf and Turkish Arabia and at Aden.

<sup>17</sup> Pro., Secret I, September 1866 No. 343.

rumour attributing to His Highness an intention of purchasing waste lands in Khandesh and Gorakhpur. Colonel Meade was to point out to the Maharaja how "plainly inconvenient" it was that Chiefs with Sovereign powers should engage in private speculations in British territory, "and how certainly such transactions must end in complications affecting the dignity of the house of Holkar." Finally, Colonel Meade was to give the Maharaja to understand that the British Government would be "compelled to withhold its recognition" from any transfer of land which might be effected in His Highness's name, and that it was therefore the earnest hope of His Excellency the Viceroy and Governor-General that the Maharaja would voluntarily recognise the expediency of abstaining from any such dealings. The Maharaja was addressed in accordance with these orders.<sup>18</sup>

[In the following month Mr. Temple, then Chief Commissioner of the Central Provinces, intimated that the Maharaja had directed his agents to apply for a considerable quantity of waste land in the Nerbudda Division. Mr. Temple did not favour the acquisition by Native Chiefs of the position pertaining to a grantee under the Waste Land Sale Rules. In reply the Government of India forwarded a copy of the above-mentioned letter to Colonel Meade, and directed the Chief Commissioner not to authorise grants or sales of land to any Native Chief who was not a subject<sup>19</sup> of the British Government.]

§ 637. Three years later a similar question arose with regard to Kashmir.

The Kashmir case, 1871 and 1882.

Mr. Aitchison referred to the above decision pronounced in connection with the Waste Land Sale Rules and described it as a very proper one. His language was almost identical with that quoted just now from Mr. Durand's demi-official letter of September 21, 1886. "The Chiefs," said Mr. Aitchison, "are unable to distinguish between their position as Sovereigns and their position as *zamindars*. Their dignity is wounded by the service of processes from our Courts. Disagreeable discussions about taxation arise." The facts of the case were that [in September 1870 the Maharaja of Kashmir applied to be allowed to purchase the village of Kalian in the Ferozepur District as an endowment for a school which he proposed to build there, and for a temple which he had built there already. His Highness requested that if this could not be allowed, Government would procure him a similar grant from one of the States of Patiala, Nabha, or Jind, whose territories adjoined the village. After some correspondence with the Financial Commissioner the Punjab Government informed the Maharaja that the village in question was already held in *jagir* and could not therefore be assigned to him. But it was suggested that he might purchase the proprietary right in some revenue-paying land or the fee-simple of some waste lands, and assign the proceeds in trust for the support of the institution. When this correspondence came before the Government of India exception was immediately taken to the action of the Punjab Government. It was pointed out that the difficulties and inconveniences arising from the possession by Native Sovereign Chiefs of land within British territory were very serious. So greatly had these evils been felt that it had been the policy of Government to effect exchanges of territory in such cases on the basis of giving to the Chiefs land in sovereign right in lieu of their *zamindari* possessions. For this reason it had been ruled by the Government of India that grants or sales of land in British territory should not be made to any Native Chief who was not a subject of the British Government. The letter<sup>20</sup> in which this information was conveyed ended with the following words:—

["In a question of this kind involving principles of Imperial policy it is to be regretted that the Government of India was not consulted before any reply was given to the Maharaja. I am now to request that His Highness may be discouraged from any idea of putting his project into execution in this particular manner.

["If His Highness is anxious to endow any institution in British territories his object can be equally well, or indeed better, attained by investing the requisite funds in Government Securities and assigning these securities to trustees for the support of the institution."]

<sup>18</sup> Pro., Political A, January 1867, No. 38.

<sup>19</sup> " February 1867, Nos. 160-161.

<sup>20</sup> Pro., Revenue B, March 1871, No. 9.

[It does not appear that the Maharaja of Kashmir made any further application in the matter.]

Mr. Aitchison's letter to the Punjab Government in which the above remarks were made was No. 49-K., dated March 11, 1871, and it is worth noting that when the circular orders of October 7, 1891, were issued the Government of India sent with them a copy of this letter to certain authorities who had not previously received an intimation of the policy of Government. This shows that the Government of India in 1891 still approved the instructions given twenty years before to the Punjab Government.

In 1882 Sir Robert Egerton, the Lieutenant-Governor of the Punjab, inquired whether the object of the decision of 1871 in the Kashmir case was to prohibit the grant or sale of Government lands to Ruling Chiefs. It appeared to him that without legislation it was impossible to prevent private persons from selling their lands to the Chiefs, and that legislation on such a matter would be invidious and unpopular. The Government of India replied that the intention was to discourage the acquisition, by sovereign or feudatory princes, of any lands in British territory—however and from whomsoever acquired. The matter, they added, was not one in which it was then necessary or desirable to resort to legislation.<sup>1</sup>

This is enough to show that the policy under discussion is not affected by the previous ownership of the immovable property which a Ruling Chief may wish to acquire. It is further quite clear that the objections apply no less to houses than to lands. Indeed in some cases—the difference arises out of the locality—one objection applies more particularly to the case of houses than to the case of lands. Two principles have been kept in view; first, it is not expedient that Ruling Chiefs should be subjected to British laws; and secondly, if they were freely allowed to buy houses in European stations where houses for European officers are in great demand, allegations might be made that there were discreditable transactions with the Chiefs whether as landlords or as purchasers. No officer, indeed, would be permitted to sell a house to a Ruling Chief except with the express sanction of Government; but the thing to avoid is the belief in Native circles that discreditable transactions might be possible. It is not necessary to recount cases to justify these remarks, but enough to support them will be found in the proceedings mentioned in a foot-note.<sup>2</sup>

§ 638. Correspondence connected with Indore and Bhopal affords numerous

instances of the practice of the Government of India in the present matter. [Repeated objections to the acquisition of lands in British territory by Maharaja Holkar and his family. In June 1875 Maharaja Holkar came forward as an intending purchaser of land in British territory. He informed the Agent to the Governor-General in Central India that he was about to buy an estate in the neighbourhood of Bombay with the view of making some provision for his second son, Yeshwant Rao, in whose name the purchase was to be made. His Highness intimated his acknowledgment of the fact that Yeshwant Rao and his heirs and successors would "in reference to such estate be subject to the laws and regulations of the land." Under the circumstances the Agent to the Governor-General supposed the purchase might be sanctioned. Before giving a final answer the Government of India inquired whether the Governor of Bombay saw any objection. The Government of Bombay in reply expressed the opinion that it was not desirable, as a general rule, to draw closer the connection between His Highness Holkar and the Mahratta population of the Presidency. Otherwise there seemed to be no particular objection to the proposed transaction. But before giving a decided opinion the Bombay Government desired to know—(1) Whether Yeshwant Rao was of age, so as to be able to deal directly with the seller of the estate; and (2) whether there was sufficient security that the estate once purchased would remain his, *i.e.*, that it would not revert to his father or elder brother,

<sup>1</sup> Pro., Political A, May 1882, Nos. 134-136.

There are some later papers which show that the Kashmir Darbar have got rid of a good many of the Kashmir properties in British territory. But it is unnecessary to abstract them, as the principles which they illustrate are already amply illustrated in the text. See Pro., Secret E May 1893, Nos. 112-125; External B, May 1894, Nos. 149-160; and Secret E, June 1894, Nos. 361-392.

<sup>2</sup> Pro. A, Political I, November 1892, Nos. 123-124.

Pro., Secret I, August 1884, Nos. 58-65.

" " September 1886, Nos. 431-433.

" " March 1890, Nos. 42-46.

The Bombay Government further intimated that the estate in question contained some small salt-works. In case the purchase were effected, these works would be closed before the transfer of the land, as it was "not desirable that a Prince of the family of His Highness Holkar should be interested in the manufacture of dutiable salt near Bombay." In conclusion, it was presumed that the Maharaja was clearly aware of the position his son would occupy as owner of the estate.

[A copy of this letter<sup>3</sup> was forwarded to General Daly, Agent to the Governor-General, Central India, with the following observations:—"His Excellency the Governor-General does not think it desirable that the property in question should be acquired by His Highness. Its acquisition would very probably occasion embarrassment in the future, and would be opposed to the object of recent negotiations. If, notwithstanding this expression of the opinion of the Governor-General, the Maharaja decides to proceed with the negotiations for the purchase of the estate on behalf of Prince Yeshwant Rao, you will take an early opportunity of stating clearly to His Highness the conditions under which the Prince must be prepared to hold it. He will be treated by the Government of Bombay, by the Courts of Justice, and by the administrative authorities of the district within which the property lies, simply as a nobleman of high rank, but in all respects answerable to British jurisdiction." ]

These orders were issued in December 1875, and were communicated at the time to Maharaja Holkar; but in July 1876 it appeared that he was taking steps to become the mortgagee of two villages in the Nasik district of the Bombay Presidency. This was the more objectionable because, in order to sever the connection between the Indore State and the Deccan, lands there held by Holkar without sovereignty had been exchanged on very favourable terms for lands from the Nimar district to be held by him like the rest of his territory. The orders passed by the Government of India show that the policy excludes mortgages as well as sales. "The Governor-General in Council," they said,<sup>4</sup> "considers that the policy of discouraging Native Chiefs from acquiring land, *whether by purchase or mortgage*, in British territory should be affirmed and maintained." They requested that Maharaja Holkar might "be courteously informed that, in the opinion of His Excellency in Council, it is neither consistent with his dignity nor expedient that His Highness should be engaged in any such transaction as the mortgage of land situated in British territory." In 1880 the Indore Darbar endeavoured to reopen the question by sending an agent to attend the auction sale of a village in the Deccan. The Darbar did not buy the village; but the Government of India remarked that the orders of 1876 were still in force, that the acquisition of lands by Maharaja Holkar in the Deccan was specially undesirable, and that they trusted that General Daly would have no difficulty in inducing the Maharaja to acquiesce in the wishes of the Government of India.<sup>5</sup> Nevertheless, in 1885, Maharaja Holkar or his illegitimate son, Yadava Rao, purchased the village of Laka Kheri in the Hoshangabad district some 3 or 4 miles distant from Indore territory. The Government of India disallowed the transaction; but in 1888 Yadava Rao was still in possession and the Darbar begged that he might be allowed to remain in possession, because as an illegitimate son, he was "entirely a private person." The reply was that unless Yadava Rao had abandoned his residence in Indore, and become to all intents and purposes a British subject, the Governor-General in Council was unable to accede to the request of the Indore Darbar.<sup>6</sup> Finally in 1888 a suit was brought by Maharani Radhabai Holkar and the widow of Yeshwant Rao Holkar, as guardians of the minor sons of the latter, to recover money due on a mortgage of the Bhandup estate, which was a property of 1,311 acres in the Island of Salsette in the Tanna Collectorate of the Bombay Presidency. A decree was obtained by the plaintiffs, and in September 1891, the Court ordered that the mortgaged property should be sold by auction. The plaintiffs purchased the estate at the sale. The Government of India agreed with the Agent to the Governor-General, Central India, that as the sale was

<sup>3</sup> No. 3279, dated December 13, 1875.

<sup>4</sup> Pro., Political A., September 1876, Nos. 68-72.

" " January 1880, Nos. 172-176.

<sup>5</sup> Pro., Internal A., January 1885, Nos. 147-148.

" " March 1885, Nos. 57-58.

" " June 1888, Nos. 289-290.

" " August 1888, Nos. 260-262.

confirmed by the Bombay High Court, they could not object to it; but they authorised the Agent to the Governor-General to press the Maharani to get rid of the estate.<sup>7</sup>

§ 639. There is a recent case in which the objection to mortgages no less than to purchases was very clearly expressed. In August 1894 the Bombay Government asked that permission might be accorded to the Muli State in Kathiawar to tender for a loan of Rs. 1,20,000 which was being negotiated on behalf of the Gangad estate on the security of certain villages comprised in that estate and situated in British territory. It was proposed that the Government should have no responsibility in the matter, as the transaction could be protected by the law in British India and the Muli State would be entitled to foreclose in case of default. The Governor-General in Council was unable to agree to the proposal and said<sup>8</sup>—"The Government of India have invariably declined to sanction the acquisition by Native Chiefs of immoveable property in British India except in very special circumstances, and on the same principle they are of opinion that *loans by Native States on the security of land in British territory should be discouraged*. The necessity for permitting the Muli State to tender for the loan does not appear to be pressing, for it is apprehended that the State will have no difficulty in finding another and equally secure investment for its surplus funds."

§ 640. In 1886 it was reported that the Begam of Bhopal thought of purchasing four or five houses in Russell Street, Calcutta, for some three lakhs of rupees, and a house and compound at Garden Reach near the residence of the late King of Oudh. The Agent to the Governor-General, Central India, was instructed to cause the Begam to be informed in very courteous terms that the purchase of such an estate by any Ruling Chief would require the sanction of Government. The telegram in which this direction was given ended—"You need not say that the purchase will be disallowed, but Her Highness should understand that the Government of India would require to be very fully satisfied that there were good reasons for it." The Begam appears to have abandoned her project immediately, as also another for acquiring house property at Allahabad which was mentioned in the same correspondence.<sup>9</sup>

Meanwhile in 1885 Nur-ul-Hasan, a son of Nawab Muhammad Sadik Husain, the husband of the Begam, had bought four villages and taken eight on lease in the Narsingpur district of the Central Provinces. The Begam argued that the Maharaja of Benares held many British villages on contract and that the Maharaja of Vizianagram and the Raja of Kapurthala had made large purchases of lands in British territory. The Government of India pointed out that these cases were hardly relevant. The Maharajas of Benares and Vizianagram have not the status of Ruling or Feudatory Chiefs, and the case of the Raja of Kapurthala was peculiar, inasmuch as he had inherited in *zamindari* tenure certain estates in Oudh specially bestowed on his grandfather in recognition of Mutiny services. The Agent to the Governor-General was requested to arrange with the Begam and the Chief Commissioner of the Central Provinces for the abandonment of the purchases and leases effected. In this there was much delay, and in the course of the correspondence the Government of India said that if there was no immediate prospect of finding private buyers, the villages should be put up to public auction. The case closed with a report dated September 27, 1887, from the Political Agent in Bhopal to the effect that, the ex-Nawab, Muhammad Sadik Husain, had sold to Seths Ramchand and Jawahir Mal all the lands and villages which his two sons, Nur-ul-Hasan and Ali Hasau, possessed in the Jubbulpur and Narsinghpur districts of the Central Provinces. These Seths were Bhopal subjects, but the Government of India took no further action in the case beyond informing the Chief Commissioner of the Central Provinces of its conclusion. The inference is that though the objections to the acquisition of immoveable property in British territory

<sup>7</sup> Pro., Secret I, July 1892, Nos. 15-20.

" " August 1892, Nos. 11-13.

<sup>8</sup> Proc., Lateral A, November 1894, Nos. 86-88.

<sup>9</sup> Pro., Secret I, August 1886, Nos. 3-11.



apply if the acquisition be made by important political personages in Native States, they do not apply if it be made by ordinary private individuals who are subjects of Ruling Chiefs.<sup>10</sup>

§ 641. We may now mention some cases in which the Government of India have permitted deviations from the general rule for special reasons. Khandwa is the head-quarters of the Nimar District of the Central Provinces and the junction at which Holkar's State Railway meets the Great Indian Peninsula Railway from Bombay to Allahabad. In 1884 Maharaja Holkar expressed a wish to acquire a plot of land at Khandwa for the accommodation of himself and of the members of his family when travelling to other parts of India. After full consideration of the circumstances of the case, the Governor-General in Council made no objection:<sup>11</sup> but he said—"The Government of India do not, as a rule, encourage Native Princes in acquiring any property outside their own dominions, as such acquisitions tend to create embarrassments by bringing quasi-sovereign authorities under the jurisdiction of our Courts."

§ 642. In 1890 the Raja of Maihar bought a fourth share of the village of Punchi in the Jubbulpur District. He already owned a small plot of land near the Naini Station of the East India Railway, a house and compound in Agra, a house at Muttra, a garden at Brindaban, and a temple and garden in the city of Jubbulpur. The Maihar State is one of the petty States of Baghelkhand with an area of 400 square miles, population of 77,438, and a revenue of some Rs. 74,000. Major Donald Robertson, the Political Agent in Baghelkhand, thought the recent purchase unobjectionable, because the Chief "would probably never place himself in conflict with the district authorities or presume to claim extra-territorial privileges," and Mr. Henvey, the Agent to the Governor-General, was inclined to agree with Major Robertson, that "in the case of petty Chiefs, such as the Raja of Maihar, the acquisition of land in British territory is not a matter of great importance." The Government of India, after inquiry into the circumstances, did not think it necessary in the particular case before them to require the Raja to give up the lands which he had acquired in British territory.<sup>12</sup>

§ 643. Another petty State in Baghelkhand is Kothi, the area being 90 square miles, the population 22,630, and the revenue about Rs. 37,000. In 1892 it appeared that the widow of an Oudh Talukdar had executed a will bequeathing to the younger surviving son of the Raja of Kothi the Jumnu estate comprising seventeen villages in the Sultanpur District of Oudh. It was said to have been declared judicially that the two sons of the Raja of Kothi were the next heirs of the property in question. The Government of India agreed with Mr. R. J. Crosthwaite, Agent to the Governor-General, Central India, that no action could be taken to prevent the acquisition of this property by the ruling family of Kothi.<sup>13</sup>

§ 644. Near the city of Lahore the Raja of Kapurthala owns the Baghwala well, to which are attached 6·37 acres, and Kapurthala allowed to make a small addition to an existing holding near Lahore, 1893. In 1892 he asked leave to purchase the Dinanwala well, to which are attached 3·83 acres, adjoining the land of the Baghwala well. The Raja represented that the Kapurthala State was entitled to purchase the land because under the local law it had a right of pre-emption in respect of it. The Government of India raised no objection<sup>14</sup> to the Raja buying the Dinanwala well, but they did not admit that a Native State could claim as a matter of right to exercise its powers of pre-emption under the Punjab Laws Act, "in contravention of the line of policy laid down by Government in respect of the non-acquisition of immoveable property in British India by Native Chiefs."

<sup>10</sup> Pro., Internal A, February 1886, Nos. 98-108.  
 " " March 1886, Nos. 117-118.  
 " " August 1886, Nos. 28-31.  
 " " May 1887, Nos. 264-269.  
 " " September 1887, Nos. 252-253.  
 " " November 1887, Nos. 128-129.

<sup>11</sup> Pro., Secret I, August 1884, Nos. 1-4.

<sup>12</sup> Pro., Internal A, October 1890, Nos. 136-140.

<sup>13</sup> Pro., Secret I, August 1892, Nos. 20-21.

<sup>14</sup> Pro., Internal A, January 1893, Nos. 114-119.

§ 645. In November 1893 the Government of India permitted the Raja of Pudukota to purchase two residences with grounds attached at the hill station of Kodaikánal in the Madura District, which is his resort in the hot weather.

Pudukota allowed to buy two residences at a hill station, 1893. He had been in the habit of renting houses at Kodaikánal for the season, and was fond of European society. There was no pressure for houses as at Ootacamund, and the Madras Government supported the application for leave to purchase,<sup>15</sup> which was granted "under the special circumstances."

§ 646. In May 1894 permission was likewise given to the Chief of Miraj (Senior branch) to buy a piece of land at Poona on which to build a bungalow for himself.<sup>16</sup> The Government of India were reluctant to refuse sanction, but did not wish the case to be made a precedent. It appeared that the Sardars and Jagirdars of of Mudhol, Sangli, Kurundwar, Jamkhandi, Jath and Bhor already had houses in Poona; and the ground upon which permission was given was that the Chief of Miraj, like these Chiefs, was one of the Deccan Sardars.

§ 647. Lastly, although the case obviously differs from that of a Ruling Chief of a State of the internal protectorate, we may notice briefly the acquisition of lands and other property in the Peshawar District by the Amir of Afghanistan. In 1885 the Amir purchased 12 acres of land in the village of Shahab Khel, and early in 1886 some land and shops in the Peshawar city. The shops were demolished, and buildings were erected on the site for the storage of almonds and the accommodation of the Amir's Agents and Post Office. In the middle of 1886 the Amir bought some 45 acres of land on the Barar stream for the cultivation

Acquisitions by the Amir of Afghanistan in the Peshawar District. of rice. All these properties are in the Peshawar District and the Government of

India, after fully considering reports of the circumstances, raised no objections. But the Amir wished to buy still more land in the Peshawar District, and the Government of India at length in 1888 pointed out to General Amir Ahmad Khan, the Amir's Agent, that there are many objections to an independent Sovereign or Chief becoming the owner of land in British territory, "not the least being that he is thereby rendered liable to the jurisdiction of the British Civil Courts in all matters pertaining to such land." They instanced the case of Bahram, who was a co-sharer in a village where the Amir had bought land in 1886. Bahram apparently had a right of pre-emption in the land acquired by the Amir, and if he pressed his claim, His Highness might become a defendant in a Civil Court in Peshawar. General Amir Ahmad Khan was asked to explain the position to the Amir; but if His Highness, with a full knowledge of the difficulties, still desired to make further purchases, the Government of India would not refuse its consent. A little later on, in 1889, the Amir's Agent at Peshawar wished to purchase, on behalf of the Amir, four shops in the principal bazar of the Peshawar City. The Government of India held that such purchases were undesirable, but that they had no legal power to prevent them. The deed of sale regarding these shops was about to be registered, and the Governor-General in Council requested that registration might be delayed until the Amir's Agent could produce orders showing that the objections explained to General Amir Ahmad Khan in 1888 had been made known to the Amir, and that His Highness nevertheless persisted in his wish to acquire landed property in British territory.<sup>17</sup> As to all of these Peshawar cases in which the Amir was concerned, it will suffice to note that there may have been political reasons lying outside the scope of this treatise for allowing the Amir to have his way, and that in any case the Government of India have no such authority over the Amir as they have over Maharaja Holkar and the Begam of Bhopal. It does not appear that the explanations given to the Amir deterred him from making purchases of immovable property in British territory, for in 1894 he purchased a house in Peshawar. Directions were given that the objections should again be explained to his Agent before the deed of sale was registered.<sup>18</sup>

<sup>15</sup> Pro., Internal B, November 1893, Nos. 158-159.  
 " " " June 1894, Nos. 117-118.

<sup>17</sup> Pro., Frontier A, November 1885, Nos. 29-33; September 1886, Nos. 25-33; May 1888, Nos. 260-281; December 1888, Nos. 14-20; April 1889, Nos. 50-54

<sup>18</sup> Pro., Frontier B, July 1894, Nos. 369-372.

§ 648. A recent case in which the Government of India have pressed their objection to the acquisition of land by a Ruling Chief in British territory is that of the late Maharaja of Bhartpur. The Maharaja held a decree for some four lakhs of rupees against the widow and heir of one Babu Bishambhar Nath and wished for leave to purchase some eighteen or nineteen villages in the Agra District which were about to be sold by auction in satisfaction of the decree. Permission was refused, but it subsequently came to notice that the Maharaja had already purchased part of the judgment-debtor's property by leave of the Civil Court in 1889. The Maharaja died on December 12, 1893, and at the time of his death owned, in addition to the recently purchased property, some twenty-one properties in the Muttra District and some lands surrounding Darbar houses at Agra. The Muttra properties had belonged to the Bhartpur State for about 125 years. The decision was that the Darbar must dispose of the property lately acquired within a reasonable time but might retain the other properties.<sup>19</sup>

§ 649. There are a good many other cases in which the Government of India have accepted accomplished facts and Chiefs and others have not been pressed to dispose of their properties. have not thought it worth while to specially press Chiefs and notable personages in Native State to divest themselves of properties already acquired by them in British territory. For instance, Ali Bahadur, the brother of the Maharaja of Samthar, acquired by purchase or on mortgage in the names of his servants shares in eleven villages of the Jalaon District. He pleaded ignorance of the orders on the subject, and it appeared that the Chiefs of Bundelkhand had not been informed of the views of Government till June 1892 and that the acquisitions had been made previously. The matter was then dropped,<sup>20</sup> so far as Ali Bahadur was concerned. But his case led to inquiries which showed that the Chiefs of Sarila, Charkhari, and Alipura and the Thakurain Larai Dulaya of Naigawan Ribai and some officials and relatives of ruling families in other Bundelkhand States owned a good many villages or shares in villages in the Hamirpur and Jhansi districts. Here again, as the orders had not been communicated to the Chiefs till the end of June 1892, the Government of India thought it would be undesirable to ask the present holders to part with property purchased before that date. "They should, however," said the Governor-General in Council,<sup>1</sup> "when a favourable opportunity offers, be advised to dispose of such property." When in accordance with the orders of June 3, 1892 (see paragraph § 634 above), the views of the Government of India were intimated to the Minister of Nepal, the Nepal Darbar furnished a long list of properties held in British territory by the Nepal State and persons of importance in Nepal. The Government of India felt assured that the Nepal Darbar would adopt suitable measures to meet their wishes, but added that no action was necessary in regard to the property which had been already acquired. The Nepal Darbar was informed accordingly.<sup>2</sup>

§ 650. There is a case of 1888 primarily connected with the Stamp Law, Transactions in British territory must be governed by British Law. which should be noticed here, before we epitomise the preceding paragraphs; for it is a case in which a principle was asserted bearing directly upon the transactions of Ruling Chiefs and important people of Native States in respect of immovable property in British territory. The Punjab Accountant-General brought to notice that the authorities of the Patiala State were in the habit of giving unstamped receipts for sums paid to them in the Umballa District, though the Patiala State had never been exempted from the operation of the Indian Stamp Act. The Accountant-General asked whether properly stamped receipts should

<sup>19</sup> Pro., Internal A, September 1893, Nos. 38-40.

July 1894, Nos. 123-131.

<sup>20</sup> Pro., Internal A, March 1895, Nos. 321-328. In the same case it was incidentally settled that arrears of land revenue and of cesses and rates recoverable as land revenue shall, when the defaulter is a Ruling Chief, be recovered by attaching the property on which the default accrued and not by arrest or distress or the sale of moveable property. The Collector must, however, first issue a writ of demand on the agent of the Chief.

<sup>1</sup> Pro., Internal A, September 1892, Nos. 182-197.

<sup>2</sup> " " May 1894, Nos. 146-149.

<sup>3</sup> Pro., Secret E, Oct. 1892, Nos. 137-139.

not in future be required in the case of payments exceeding Rs. 20. The Punjab Lieutenant-Governor, Sir James Lyall, was disposed to think that in the case of receipts or instruments of any kind, the parties to which are the British Government and a Native State, the stamp duty might, as a matter of courtesy and convenience, be remitted by an order under section 8 of the Indian Stamp Act. But the Government of India pointed out that such an exemption would from any point of view appear to be proper only in the case of transactions of a distinctively political character, and that there might be many instruments executed by the representatives of the British Government and a Native State, in which either one or the other, or both, might be acting in a quasi-private character.

“The question of exemption,” said the Government of India,<sup>3</sup> “has been raised before in relation to other Native States, and it has not been found practicable to lay down any general rule on the subject such as that suggested by His Honour the Lieutenant-Governor. *The only safe principle to follow is that transactions in British territory must be governed by British law.*”

§ 651. In paragraph § 13 when discussing the permissible use of International Law in connection with Indian political business we mentioned a case of 1874 from the Central Provinces in which the Feudatory Chiefs of that part of the country were declared exempt in British territory from process against the person. It should not escape notice that this decision has been superseded by the general provision of the Civil Procedure Code, quoted in paragraph § 624, which exempts all Ruling Chiefs from arrest under that Code, except with the consent of Government. That paragraph is in itself a summary of one part of the present subject and should be read over again here. For the rest we have to add the following conclusions:—

(1) *In general, civil transactions in British territory must be governed by British law.*

(2) *As a general rule, the Government of India object to the acquisition of immoveable property in British territory by Ruling Chiefs and notable personages of Native States.*

(3) *The ground of this objection is that in respect of such property the owners are amenable to British Courts,—in the case of Ruling Chiefs and the Princes, Ambassadors and Envoys referred to in the Code of Civil Procedure, if sued by their tenants or with the consent of Government, and, in other cases, absolutely.*

(4) *Other grounds of the objection are that the dignity of a Ruling Chief might be lowered by his liability to be summoned as a party or witness, that inconvenient questions might arise regarding taxation, and that opportunities might be afforded for unsatisfactory dealings between Chiefs and officers of Government.*

(5) *The objections apply to any lands, by whomsoever owned, to house property, and to acquisitions by mortgage. But in a case of impending acquisition by bequest or succession, no action was thought practicable; and the objections do not apply to the acquisitions of merely titular Chiefs, who are ordinary British subjects.*

(6) *The objections are so strong that the Government of India have in some cases insisted upon a Ruling Chief or an important personage of a Native State divesting himself of immoveable property acquired by him in British territory. But, on the other hand, the Government of India, while still holding that such Chiefs and other persons should be advised on favourable opportunities to get rid of such properties, have sometimes refrained from pressing them to do so, especially when the properties had been acquired in ignorance of the wishes of Government.*

(7) *Exceptions to the general rule are sometimes allowed for special reasons:—for example, in the case of buildings or building sites, because*

<sup>3</sup> Pro., Internal A, January 1880, Nos. 81-82.

*a Chief requires a residence at some place in British territory convenient for himself and unobjectionable from the point of view of Government, and in the case of agricultural land, because a Chief already owns such land in British territory and desires to make some small addition to the property.*

§ 652. So far in this Chapter our main subject has been the conditional amenability to British Courts of Justice of British laws further illustrated. Ruling Chiefs as traders or land-owners or house-holders in British territory. Before we pass on to the civil and military employment of Ruling Chiefs and their subjects under the British Government, we may insert as an addendum to the above summary two or three more cases illustrating the principle which is applicable alike to commerce and to the possession of immoveable property, that transactions in British territory should be governed by British law. Of these cases, one arose in connection with the position of the Raja of Kapurthala as an Oudh *Talukdar*: the two other cases concerned respectively the Sultan of Zanzibar and the Amir of Kabul. These two cases, therefore, do not strictly fall within a description of the policy and practice of the Government of India in the internal protectorate; but it will readily be seen that the principles upon which they were decided, if applicable in the case of such a potentate as the Amir, would also, so far as they asserted liability to the operation of British laws and fiscal regulations, be *à fortiori* applicable in the case of a Chief enjoying only those limited powers of sovereignty which belong to Ruling Chiefs of the Indian protectorate. This argument further explains why we inserted above some account of the case of the Amir's houses and lands in the Peshawar District.

§ 653. In 1859 after the Raja of Kapurthala had received his grant of lands in Oudh, the Chief Commissioner directed that, except in summary and civil suits, the Raja should not be required to endorse petitions on stamped paper. During the minority of the present Chief the question arose whether this privilege should be continued. The Government of the North-Western Provinces and Oudh reported that the Raja of Kapurthala is ranked in the Oudh Darbar list as an ordinary *Talukdar* and that the affairs of his estate are in all respects governed by the ordinary law of the land. The Lieutenant-Governor and Chief Commissioner saw no good reason for now exempting the Raja from the general operation of the Stamp Act, and the Governor-General in Council, on January 11, 1889, agreed.<sup>4</sup>

§ 654. The Sultan of Zanzibar in 1883 complained of the action taken by the Bombay port authorities in applying to his ships trading to that port the provisions of the Native Passenger Ships Act, No. VIII of 1876. The Foreign Secretary, addressing the Agent and Consul-General at Zanzibar on September 14, 1883, wrote:—"The Government of India are satisfied that this Act has been correctly interpreted, and must continue applicable to these and all other foreign ships which are purely *trading* vessels. The Government of India, both for the protection of its own subjects and in fairness to competing ship-owners, are unable to permit any exemption from the regular working of the law in force in British India in favour of His Highness's ships, any more than in favour of those of any other power." At the same time the Government of Bombay were requested to avoid all unnecessary friction in working the Act, and in the case of the Zanzibar ships to generally accept any evidence reasonably sufficient to show that the ships are seaworthy and properly fitted, equipped, and manned.<sup>5</sup>

§ 655. The case of the liability of the Amir's almonds to certain tolls and duties is a case of the application of rules of International Law in dealings with an Asiatic power outside the Indian Protectorate. In November 1884 the Punjab Government reported on the question of the exemption of convoys of almonds sent down by the Amir for sale from the payment of Khaibar tolls and Peshawar city duties. It seemed to Sir Charles Aitchison, the Lieutenant-Governor, that in such matters the Amir

should be dealt with on the same principles as regulate the question between European powers; that he should receive to the full the same privileges and concessions as are granted to European Sovereigns; and that it would be inconvenient to grant him more. The Lieutenant-Governor had no doubt that a suitable explanation that the Amir was put on the same footing in this behalf as the greatest powers in Europe ought to be quite satisfactory to him. The fourth and fifth paragraphs of the Punjab letter containing these observations were thus expressed:—

“4. So far as Sir Charles Aitchison is aware, exemption from taxation is not granted in Europe to the property of one State or Sovereign sent into the territories of another for purposes of trade and sale. The common usage there exempts from taxation the personal effects of a foreign Sovereign sojourning in another State, and his family and suite, but other private property of the Sovereign is liable to taxes and imposts. The same rules, the Lieutenant-Governor believes, apply to ambassadors and their public residences. But even in these cases the exemption is only from general taxes levied for the general purposes of the State and not from local taxation and in no case does it appear that the exemption extends to goods intended for trade and sale.

“5. Sir Charles Aitchison thinks, therefore, that all goods *bonâ fide* the personal property of the Amir, and all goods, such as equipment for troops and the like, which are required for strictly State purposes, should be exempt from toll on submission of a certificate; but that no property, whether belonging to the Amir personally or to the State, sent through the Khaibar Pass for purposes of trade and sale or in connection therewith, should be exempted from duty; otherwise, seeing that in the East most Governments trade, it seems to the Lieutenant-Governor impossible to say to what length the exemption of such property will extend.”

The principles enunciated in the fifth paragraph of this letter were approved by the Government of India.<sup>6</sup>

§ 656. Our next topic is the civil and military employment of Ruling Chiefs and their subjects under the British Government. In paragraph § 152 we have mentioned the decision of the Government of India, given on a reference

Grant of honorary commissions in the British Army to certain Ruling Chiefs and others. made by Lord Napier of Magdala in 1871, that the subjects of Native States are eligible for enlistment as soldiers in the British service. In a certain number of special cases honorary commissions in the British Army have been granted to Ruling Chiefs and important personages of Native States. At the Delhi Assemblage in 1877 the late Maharajas of Kashmir and Gwalior were appointed to the honorary rank of General in the British Army.<sup>7</sup> In 1881 the Nawab of Jaora<sup>8</sup> and in 1882 the Maharaj Rana of Dholpur<sup>9</sup> were given the honorary rank of Major in the army and were posted, respectively to the 1st and 2nd Regiments of the Central India Horse. In 1883, when similar honorary rank was conferred on the Maharaja of Kuch Behar, the Secretary of State expressed the opinion<sup>10</sup> that “the grant of honorary military titles to gentlemen, however high their rank may be, who are not in any way connected with the army, should only be resorted to under very special circumstances.” The next year when proposing the honorary rank of Lieutenant-Colonel for the Maharao Raja of Alwar and of Lieutenant for the late Nawab of Mamdot—the latter was not a Ruling Chief, but a Punjab *jagirdar* and ordinary British subject, the sovereign powers of a former Nawab having been forfeited for misgovernment in 1856—the Government of India expressed concurrence in the opinion of the Secretary of State, adding that they had discouraged as much as possible the submission of applications for these military titles. They held, however, that there were exceptional circumstances in both cases then under consideration which made their special treatment desirable. The proposals were accepted,<sup>11</sup> and the necessary notifications appeared

Pro., Frontier A, February 1885, Nos. 7-43. See also Pro., Secret F, July 1894, Nos. 366-401, where the decision proceeded on the same principles.

<sup>7</sup> Pro., Political A, December 1877, Nos. 27-33.

<sup>8</sup> “ “ “ November 1881, Nos. 315-317.

<sup>9</sup> Pro. A, Military G., September 1882, Nos. 6-12.

<sup>10</sup> “ “ “ October 1883, Nos. 1-2.

<sup>11</sup> Pro., Internal A, January 1885, Nos. 137-146.

“ “ “ May 1886, Nos. 35-40.

“ “ “ Aitchison, IX, page 65.

in the *London Gazette* of March 24, 1885. In 1887 the Maharaja of Kuch Behar was promoted to the honorary rank of Lieutenant-Colonel.<sup>12</sup> The honorary rank of Colonel in the army was bestowed on the present Maharaja of Kashmir<sup>13</sup> in 1888 and on the late Maharaja of Mysore<sup>14</sup> in 1893.

As is already apparent in the case of the Nawab of Mamdot, the distinction here in question has not been restricted to Ruling Chiefs. When the 37th Dogra Regiment was newly formed the Commanding Officer, Lieutenant-Colonel Vincent Rivaz, suggested that if the principal clans of the two well-known circles of actual or former principalities in the Punjab Hills were represented in the regiment, this would make service in it very popular with all classes of Dogras. The Jammu house is the head of the one circle and the Katoch house, formerly rulers of Kangra, of the other. As a consequence of this suggestion, when honorary rank was conferred on the Maharaja of Kashmir, it was simultaneously bestowed on Raja Jaichand of Lambagraon, a British *jagirdar*, but the head of the Katoch Rajputs and the representative of the old Kangra family.<sup>15</sup> When the titles had been gazetted in London, the Maharaja was appointed by the Governor-General in Council to be Honorary Colonel of the 37th Dogras, and Raja Jaichand to be an Honorary Major in the same regiment. In 1891, on the occasion of the reconstitution of the 38th Dogra Regiment, the honorary rank of Lieutenant-Colonel in the army was conferred on Raja Ram Singh, the brother of the Maharaja of Kashmir and Commander-in-Chief of the Kashmir Army. A somewhat similar case is that of the appointment of Maharaj Sir Partab Singh, brother of the Chief of Jodhpur, to be an Honorary Lieutenant-Colonel. This appointment was made<sup>16</sup> on June 21, 1887. In the case of Honorary Major Muhammad Ali Beg, Nawab Afsar-i-Jung, Bahadur, Aide-de-Camp to the Nizam and in command of a brigade in the Hyderabad Army, there was a certain amount of discussion. Muhammad Ali Beg was a gallant soldier who had been a *sowar* and afterwards a Risaldar in the Hyderabad Contingent Cavalry. The Secretary of State, forgetting the cases of the Nawab of Mamdot and Sir Partab Singh of Jodhpur, objected that honorary rank in the army had hitherto been conferred only on Ruling Chiefs. Some apprehension was felt at the India Office lest the bestowal of honorary rank on a man like Muhammad Ali Beg might make Ruling Chiefs think less of it. But the Government of India pressed the case, and eventually Muhammad Ali Beg was attached as Honorary Major to his old regiment, the 3rd Cavalry of the Hyderabad Contingent.<sup>17</sup>

Although in many of these cases the recipients of honorary rank have been nominally posted to particular regiments, none of them are required to perform regimental duties as a consequence of their rank. After an attentive examination of the various records, it cannot be said that any general principle has been laid down upon which this honorary rank should be given, unless we regard as such the dictum of the Secretary of State in the case of the Maharaja of Kuch Behar that "*the grant of honorary military titles to gentlemen, however high their rank may be, who are not in any way connected with the army, should only be resorted to under very special circumstances.*" A reference is given in a foot-note<sup>18</sup> to two cases, of which it is unnecessary to state the particulars, but in which the grant of an honorary commission has been refused.

<sup>12</sup> Pro., Internal A, October 1887, Nos. 198-199.

<sup>13</sup> Pro., External A, June 1888, Nos. 256-270.

<sup>14</sup> For a description of these circles, see *Our Indian Protectorate*, pages 139-141. The text is founded on Proceedings, External A, June 1888, Nos. 256-270.

<sup>15</sup> Aitchison, III, page 187.

<sup>16</sup> Pro., Internal A, June 1888, Nos. 113-114.

<sup>17</sup> Pro., Internal A, September 1893, Nos. 54-60.

Pro., Internal A, July 1888, No. 25.

" " B, January 1891, No. 466.

The following list of gentlemen, other than Ruling Chiefs, who hold or have held honorary commissions in the army, is taken from the K.-W. of Pro., Internal A, March 1893, No. 317:—

NAME.	RANK.
The late Nawab of Mamdot . . . . .	Honorary Lieutenant.
Raja Jai Singh of Lambagram . . . . .	Major.
Muhammad Ali Beg . . . . .	"
Maharaj Sir Partab Singh of Jodhpur . . . . .	Lieutenant-Colonel.
Sardar Muhammad Aslam Khao, C.I.E. . . . .	"
Raja Ram Singh of Kashmir . . . . .	"
Mirza Ataula Khan, Resalidar-Major . . . . .	"

<sup>18</sup> Pro., Internal A, October 1885, Nos. 72-74.

Pro., Internal B, December 1891, Nos. 311-312.

It remains to note more particularly what is the effect of honorary military rank. In 1893 a suggestion was made that the Maharaja of Kuch Behar might be permanently attached as an Honorary Officer to some British Cavalry Regiment. It appeared that there was no regulation under which any one not holding a combatant Commission from the Queen could be posted to a British regiment and borne on its roll of officers. The rule also, which is laid down by Royal Warrant, regarding honorary rank, prescribes that it "shall not entitle the holder of such rank to Military Command of any kind." It followed, therefore, that, "a gentleman holding honorary rank could not serve with a British regiment except for instructional purposes; his position on parade would be merely that of a pupil, and the senior Combatant officer of the regiment on parade, whatever his rank, would command, while the honorary officer might under his orders drill the troop, squadron or regiment, or perform any other duties in which it might be desired to instruct him." There did not appear to be any method by which the Maharaja could be permanently attached to any British regiment, short of his being regularly appointed to it, with a Commission as Second Lieutenant; but this would involve his doing duty continuously with the regiment like any other officer.\*

§ 657. A question closely connected with the present subject is that of the

The employment of the relatives of Ruling Chiefs in the military service of the British Government.

employment of the sons or other relatives of Ruling Chiefs in the military service of the British Government. In 1892, Sir George Greaves, when Commander-in-

Chief of the Bombay Army, advocated the grant of commissions as Native officers in that army to the sons of Ruling Chiefs and other Native gentlemen of high standing. He did not wish them to have the same rank as British officers in the Indian Army, but proposed that the commissions should not be granted without previous training, and that the selected candidates should be attached, in the first instance, on probation to Native regiments, and should not be promoted to the rank of Native officer until they had given proof of their fitness for that position. The Bombay Government supported Sir George Greaves to a certain limited extent. They suggested that the number of probationers should be restricted to three a year; that they should have received not less than three years' education at the Rajkumar College; that the nominations should rest with the Government of Bombay upon the recommendation of the Political Agent, Kathiawar, and the Principal of the College; and lastly, that the promotion of the candidates when appointed should stop with the post of Resaldar-Major. These conditions practically confined the scheme to the Province of Kathiawar. A further suggestion was also thrown out that a career might be found for the candidates, after their periods of training, in the Imperial Service Corps. The Governor-General in Council was, however, convinced that Ruling Chiefs would not contentedly see their sons and near relatives serving in the position of ordinary Native officers, unless wider opportunities of promotion than those now offered were thrown open to them. The Government of Bombay had described the special risks attaching to such an experiment, of which it will suffice to say that they touched the confidence of Native troops in their officers, the feelings of British officers themselves, and the possibility that the question might be taken up by one or other of the political parties in England. These risks seemed to the Governor-General in Council so serious that he was not prepared to do anything to incur them. On the other hand, the scheme of finding a career for the young nobility of Bombay in the Imperial Service Troops of other States did not commend itself to the Government of India. Any project for placing the members of one ruling family in the service of another house would be extremely difficult to carry out, and it was desirable and had often been stated that the Native States forces should be as far as possible officered by Natives of the States concerned.<sup>19</sup> The Government of India, however, pointed out that it had been the practice, for some time past, in the Bengal Army to grant direct commissions on probation to specially selected Native gentlemen of good family. A measure of this sort would apparently to some extent meet the wishes

\* Proc., Internal A, January 1894, No. 82.

† See as to this paragraph § 131 above.



of Sir George Greaves, and there was no apparent reason why a similar system should not be followed when possible in the Bombay Army. The general questions, whether higher promotion should be opened to Native soldiers and whether better substantive positions in the army should be made available for the higher classes of Native gentlemen, had lately been the subject of an exhaustive discussion with the Secretary of State, and the Government of India did not wish to go over that ground again. And for two reasons we shall here pass it by; first, because the discussion did not lead to any change of system; and secondly, because it extended far beyond the limits of the policy and practice of the Government of India in their relations with Native States.<sup>20</sup> The result is that while there is no bar to the employment of the relatives of Ruling Chiefs and nobles of Native States in the military service of the British Government, there is no special provision for them and they could join that service only on the footing of ordinary Native officers.

§ 658. It is well known that the Chiefs of Rajputana frequently entered the service of the Delhi Emperors as Governors and Generals; one Rajput Chief, for instance, governed Kabul for Aurangzib, while another commanded his army in the Deccan.<sup>1</sup> Though the rank in the British Army which has sometimes been given to Ruling Chiefs is purely honorary and entails no military duties, it must not be forgotten that many of these Chiefs now have opportunities of rendering military service to the Empire in consequence of the organisation of the Imperial Service Corps described in paragraphs § 131 and § 132. Here also there is a possible military career for the young men of the ruling or leading families of the States where these troops are maintained. Coming now to the question of the civil employment of Ruling Chiefs, we cannot say that there is as yet any leading case in which it has been made the subject of full discussion, but we may note a few points of interest which will probably be borne in mind if the matter should demand such discussion hereafter.

The Raja of Nahan, when offering the services of his troops to the British Government in 1888, went on to say that there might never be a war, but that, as he desired to do something in the shape of service, he hoped the Government would allow him "to join the Frontier Commissioner to co-operate with him in his work personally." He proposed to entrust the affairs of his State during his absence to his son and heir.<sup>2</sup> It did not seem practicable to accept this offer, which was suitably acknowledged. Some years later when there was news abroad of a proposed mission to Kabul under Lord Roberts—a mission which was never sent—the Raja of Nahan again offered his services. The Punjab Lieutenant-Governor, Sir Dennis Fitzpatrick, on October 10, 1892, expressed a strong hope that if Lord Roberts were to proceed to Jalalabad, it might be possible to accede to the request of the Raja. To associate one of the Punjab Chiefs in such a mission would, the Lieutenant-Governor thought, have a very good political effect. The Raja was thanked for his loyal offer and informed that it would be fully considered if the despatch of a mission were decided upon.<sup>3</sup>

The Nawab of Loharu made repeated applications to be allowed to join the same proposed mission. He was told that his offer had been noted and that his wish would be borne in mind.<sup>4</sup> The Maharaja of Jodhpur also showed great eagerness to accompany Lord Roberts. Sir Mortimer Durand, the Foreign Secretary, noted—"In some ways the presence of a considerable Ruling Chief or two with a mission of this kind would be a good thing. It would show that the great Ruling Chiefs identify themselves with us. There are, of course, objections, but I am not sure that they are necessarily fatal." Lord Lansdowne,

<sup>20</sup> See despatch to Secretary of State, No. 47 (Military), dated March 21, 1885, in K.W. of Pro., Internal A, May 1886, Nos. 35-40; and Pro., Internal A, August 1892, No. 7-9. There are later papers on this subject in the Military Department of the Government of India ending with an Order in Council dated September 27, 1894. But they do not necessitate any addition to the text.

<sup>1</sup> Rajputana Gazetteer, Vol. I, page 44.

<sup>2</sup> Pro., Internal A, March 1889, Nos. 104-115.

September 1889, Nos. 153-158.

<sup>3</sup> Pro., Frontier B, November 1892, Nos. 244-290. He offered again when Sir Mortimer Durand was deputed; and His Highness was told that as the mission was to be a very small one he could not be taken.

<sup>4</sup> Pro., Frontier B, November 1892, Nos. 195-243.

March 1893, Nos. 118-125.

the Viceroy, wrote <sup>5</sup> to the Maharaja on September 8, 1892—"I will bear Your Highness's offer in mind. It is in accordance with the traditions of your house and your own well-known loyalty and good-will towards the Government of the Queen."

The Punjab Government, in December 1892, proposed that the young Nawab of Pataudi, then studying at the Aitchison College, should eventually be posted to Baluchistan or elsewhere as an Honorary Assistant Political Officer. The proposal was put forward by Sir Dennis Fitzpatrick, and the Punjab Secretary wrote—"Sir Dennis desires me to say that what we want is to open careers to promising young men of good family, and that it is unnecessary to pay them to take what they most desire. Sir Dennis believes that this principle of honorary employment has much political value and is capable of great and useful extension." Pataudi is a tiny State, the area being 53 square miles, the population 19,000, and the revenue some 73,000 rupees. The Agent to the Governor-General in Baluchistan did not favour the proposal, and, as it was intended that the young Nawab should continue his studies for two years, the answer to the Punjab Government was that it would perhaps be best to re-submit the proposal at the end of that period.<sup>6</sup>

The Maler Kotla State has a population of nearly 76,000, a revenue of some Rs. 3,14,000, and an area of 162 square miles. The present Nawab is insane and the State has long been under management. The Native Superintendent, named Agha Muhammad, died on March 23, 1893; and the Punjab Lieutenant-Governor, Sir Dennis Fitzpatrick, proposed to appoint the Nawab of Loharu to be Superintendent in the place of Agha Muhammad, deceased. Loharu has an area of 226 square miles, a population of some 23,000, and, approximately, a revenue of Rs. 66,000. In making the proposal Sir Dennis observed that "the employment of Ruling Chiefs in the civil service of Government is likely to have an excellent political effect." The appointment is a paid one, the salary being Rs. 500 a month. The intention was that the immediate charge of the Loharu State should be entrusted to a brother of the Nawab, already there employed as a Nazim. The Government of India replied that they had always acted on the principle that the less one Native State has to do with the affairs of another the better, but that if the Lieutenant-Governor considered that in this case the principle might be set aside, the Governor-General in Council would not object, seeing that the Chiefships concerned were unimportant.<sup>7</sup> The Nawab accepted the appointment of Superintendent and is still (December 1894) holding it.

It only remains to add here that on many occasions Ruling Chiefs have been appointed Members of the Legislative Council of the Governor-General. The Maharaja of Patiala was so appointed in 1862; the Nawab of Rampur in 1863 and 1866; the Maharaja of Jaipur in 1869, 1871 and 1873; the Raja of Nahan in 1877; and the Raja of Jind in 1880.

§ 659. We quoted in paragraph § 12 the opinion of Mr. Pontifex that for certain purposes at least the subjects of subordinate Indian States must be considered subjects of the Empress; and we said that we would return to the question how far and for what purposes they may be so considered. In paragraphs § 28 and § 29 we drew the inferences that we must treat subjects of Native States residing beyond the limits of India as British subjects for the purposes of conducting our relations with Foreign States and of exercising any jurisdiction which we locally possess; and that we must require Foreign Powers to treat them in the same way. Again in paragraph § 32 we cited cases to show that extradition demands by Foreign Powers should be dealt with on the same footing whether the person whose extradition is demanded be a subject of a Ruling Chief or a Native Indian subject of Her Majesty. We have only to add here that, if we may deduce a principle from a single case, subjects of

Position of the subjects of Native States: (1) residing outside India; (2) in relation to Foreign Powers; and (3) on the high seas in Native State vessels.

<sup>5</sup> Pro., Frontier, November 1892, Nos. 195-248.

<sup>6</sup> Pro., Internal B, February 1893, Nos. 306-315. See also Pro. B, Political 1, June 1884, No. 34, in which the Government of India agreed to a proposal of the Chief

Commissioner of the Central Provinces that the sons of Chiefs should be appointed Honorary Assistant Commissioners so as to get training in administrative work.

<sup>7</sup> Pro., Internal B, April 1893, Nos. 104-108.

Native States, not residing abroad in places where the British Government has some jurisdiction, but being on board ship on the high seas in vessels of their own States, remain subject to the laws of those States. In January 1886 at Colombo the second officer of a Kutch vessel accused a lascar of having cut off his right ear on board the vessel on the high seas. The Bombay Government informed the Government of Ceylon that they could not advise the detention of the accused as we appeared to have no jurisdiction. But in March 1888 the same Government referred this case to the Government of India, making it, and a claim for naturalisation preferred by certain Kutch ship-owners, the texts of a discussion of the rights and obligations of the subjects of Native States when employed as owners or crews of vessels of those States trading with foreign countries. The Government of India did not think it necessary to deal with the matter at large. The questions, they said,<sup>9</sup> discussed in the Bombay Government letter "appear so far to have been raised only in connection with subjects of His Highness the Rao of Kutch and ships from that State. Article 15 of the treaty of the 13th October 1819 apparently recognises the independent character of Kutch vessels; and inasmuch as article 10 of the same treaty provides that the civil and criminal jurisdiction of the British Government shall not be introduced into Kutch, Kutch subjects on Kutch vessels on the high seas are, in the opinion of the Government of India, subject to Kutch law, and not to the territorial law of British India. Until His Highness the Rao requests that Kutch vessels may be brought under British Indian law, it would seem to the Government of India undesirable to move in the matter of their registration or to take measures with a view to bringing the crews under British jurisdiction. It does not appear at present necessary to consider these questions in connection with ships of other nationalities."

§ 660. This seemed the most convenient place to notice the above ruling of 1888, but in this chapter we are more particularly concerned with the position of subjects of Native States in British territory. We have no materials for any general statement of that position, and can only notice such few points of

Civil employment under the British Government is open to the subjects of Native States.

interest or importance as recorded cases contain. And first we may say that *it has long been an accepted principle of*

*policy that the subjects of Native States shall be eligible for civil employment under the British Government.* Thus in 1872, when Mr. Saunders, the Officiating Resident at Hyderabad, submitted a scheme for the employment of Natives in the higher grades of the Commission and Police of the Hyderabad Assigned Districts, the Government of India wrote—"With a view to give practical effect to the scheme His Excellency in Council authorises you to select five young native gentlemen of good family and good promise with a fair knowledge of English. Such will doubtless be found, *if not in Berar,*

Hyderabad Attachéships, 1872.

among the Mahratta-speaking population in the Bombay Presidency or *possibly in the Hyderabad State.* Of the five, one or two should be attached to the Residency, and the others to such of the Commissioners and Deputy Commissioners, in Berar as are likely to take the deepest interest in the matter, and to treat the native gentlemen with the kindest confidence and train them best. They may receive such designation as you think most appropriate, perhaps Attaché to the Resident, or Commissioner, or Deputy Commissioner, as the case may be. Their appointments should be gazetted. Their pay should be fixed at such a rate, not exceeding Rs. 200 a month, as you may consider fitting, the expense being debited to the Berars. It is thought that a probationary period of three years will probably be long enough. If the young men give satisfaction during that period, they can then be drafted into the Civil or Police service in Berar, or *other parts of India*, and thus be fairly launched with a career before them." These instructions were entirely approved by the Secretary of State<sup>9</sup>; and they appear to imply the principle that subjects of Native States are eligible for civil employment under the British Government.

§ 661. During a tour in Central India the Viceroy, Lord Northbrook, visited the colleges at Ratlam, Jaora and Indore which were attended by many of the sons and relatives of the principal Thákurs and nobles of Central India;

<sup>9</sup> Pro., Internal A., July 1888, Nos. 893-894.

<sup>9</sup> Pro., General A., October 1872, Nos. 102-118, and January 1873, No. 9.

and, as a result of this tour, the Government of India, being "anxious to encourage the liberal education of the higher ranks by giving an opportunity to

Rajputana and Central India Attaché. some of the young men who have qualified themselves of entering the service of the British Government," authorised the creation of two new Attachéships, one for Central India, and the other for Rajputana.<sup>10</sup> These were paid appointments, but it may be mentioned that the son of the Nawab of Jaora has lately been appointed to be an Honorary Attaché to the Governor-General's Agent for Central India.<sup>11</sup>

§ 662. Some correspondence, however, as to the grant of certificates of naturalisation and on the more important matter of the Report of the Public Service Commission is quite conclusive in regard to the policy of the British Government touching the eligibility of subjects of Native States for British civil employ.

In 1892 the Bombay Government made a report upon the grant of certificates of naturalisation to seafaring men, traders and students. The Indian Naturalisation Act, No. XXX of 1852, is in force throughout the whole of British India except certain Scheduled Districts. It enables any

Bombay reference regarding natural- actual resident of British India<sup>12</sup> to apply isation, 1892. for a certificate, and on obtaining the

same and taking the prescribed oath of allegiance he is within Indian territories under British Government to "be deemed a natural-born subject of Her Majesty as if he had been born within the said territories," and is to "be entitled within the said territories to all the rights, privileges and capacities of a subject of Her Majesty born within the said territories, except such rights, privileges and capacities, if any, as may be specially excepted in such certificate." For our immediate purpose we may leave the case of the seafaring men aside and take the case of the students and of the trader, one Chimamram Rambaghat, whose application was specially reported by the Bombay Government. As to the students, the rules of the Bombay High Court for the examination of pleaders contemplate the examination of British subjects only; and the Bombay Courts Act, No. XIV of 1869, section 22, directs that "no person shall be appointed a Subordinate Judge unless he be a subject of the Queen." For students or pleaders who, being subjects of a Native State, might be content to practise in the Political Courts, the Bombay Government provided a special examination; to others they granted certificates of naturalisation upon clear proof of permanent settlement in British India.

In replying to the Bombay Government the Government of India called attention to a previous letter, dated May 27, 1892, which had stated that the Governor-General in Council was unable to concur in the view held by Lord Reay's Government that subjects of Native States should be considered ineligible for appointment to the Provincial Service, and had expressed the opinion that the law regarding appointment to the office of Subordinate Judge in Bombay should, on a suitable opportunity, be amended in this respect. The Government of India added<sup>13</sup> that they would be glad if the Judges of the High Court were moved to amend their rules so as to throw open the Pleaders' Examination to subjects of Native States. Until the law and rules were so amended, the Government of India had "no objection to certificates of naturalisation being issued to students from Native States who desire to qualify for the Subordinate Judicial Service or for the legal profession in Bombay."

§ 663. In the course of the discussion on this case the Under-Secretary in the Foreign Department raised the question whether the provisions of section 3 of the Statute 12 & 13, William III., chapter 2 (the Act of Settlement), which declare that "no person born out of the Kingdoms of England, Scotland or

<sup>10</sup> The civil employment of the subjects of Native States under the British Government is not barred by the Act of Settlement.

<sup>10</sup> Pro., General A, February 1876, Nos. 39-41.

<sup>11</sup> Pro., General B, March 1894, Nos. 10-11.

<sup>12</sup> The expression used in the Act is "the territories under the government of the East India Company."

<sup>13</sup> See Home Department, No. 1536, dated May 27, 1892, and Foreign Department, No. 3811-I., dated October 30, 1893.

Pro., Internal A, December 1893, Nos. 45-54.

Ireland, or the dominions thereunto belonging . . . shall be capable . . . to enjoy any office or place of trust, either civil or military," under the Crown, operate so as to prevent the appointment of subjects of Native States in India to such offices or places of trust in British India. As the territories of Native States do not form part of Her Majesty's dominions, the actual issue was whether these provisions of the Act of Settlement are in force in British India or not. The Legislative Department held that they are not in force. The Statute was passed in 1700. Mr. Macpherson, the Deputy Secretary, pointed out that the question whether a Statute passed before the establishment of the Mayor's Court in 1726 applies to British India is one of fact, to be decided with reference not merely to the language of this Statute but to all the circumstances of the case. Apparently the provisions under consideration were never practically applied in India; so there was a usage of nearly two centuries against their application. Farther, subsequent legislation was inconsistent with the assumption that these provisions had been in force. The Act of 1858 transferring the government of India to the Crown<sup>14</sup> limited the Civil Service of India to "persons being natural-born subjects of Her Majesty." A Statute of 1870<sup>15</sup> opened "offices, places and employments in the Civil Service of Her Majesty in India" to "Natives of India" who had not passed the competitive examination; but limited the expression "Natives of India" to persons "born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only." It was ruled in 1885 by the Secretary of State<sup>16</sup> that this Statute did not authorise the appointment of the subjects of Native States. These restrictions would have been unnecessary if the provisions of the Act of Settlement had been in force. Moreover a Statute of 1861, which directed that vacancies in certain "offices, places and employments" should be filled "from amongst the Covenanted Civil Servants of the Crown in India," imposed no statutory restriction as to the class of persons who might be appointed to other vacancies,<sup>17</sup> and this would hardly have been the case if the provisions of the Act of Settlement had been in force and the intention had been to save their operation. From the leading Privy Council case of *The Mayor of Lyons versus The East India Company*, it appeared that the charter of 13 Geo. I., under which corporations of Mayors and Aldermen were constituted at Calcutta, Madras, and Bombay, expressly provided that two of the Aldermen at each place might be foreigners, which strongly supported the contention that the law prohibiting aliens from holding office had not been introduced into India. The conclusion to which Mr. Macpherson came upon these arguments was accepted by Mr. Harvey James, the Secretary, and Sir Alexander Miller, the Law Member. "The object of the Act of Settlement," said Sir Alexander Miller, "was, as is well known, to prevent the employment of Dutchmen by King William III., which in the earlier years of his reign had become a public scandal. I very much doubt whether it ever applied to any offices not directly under the Crown in *England*: at any rate it was never admittedly in force in Scotland, and foreigners were freely employed as military officers in the War of Succession: but however that may be, I do not think it can be treated as applying to India, and I think that the reasons adduced by Mr. Macpherson are sufficient justification for this opinion."

§ 664. In the same correspondence the Government of India dealt with the case of Chimanram Rambhagat, a native Bombay trader, 1892-93. of Bikanir, who had permanently settled at Bombay as an opium broker and had applied for naturalisation in order to obtain the protection of Political Agents when visiting Native States. The Bombay Government informed him that subjects of Native States were entitled to Her Majesty's protection beyond the limits of their States. The Agent to the Governor-General in Rajputana thought a certificate of naturalisation might be flaunted before ignorant officials of Native States in pretence of the possession of some hidden influence. The Government of India held that the issue of certificates of naturalisation should (except in the cases already noted of qualification for civil or legal employ) "be generally confined to cases in which the

<sup>14</sup> 21 & 22 Vict., Chap. 106, section 32.

<sup>15</sup> 33 Vict., Chap. 8, section 6.

<sup>16</sup> Despatch No. 52 of May 14, 1885.

<sup>17</sup> 24 & 25 Vict., Chap. 54, sections 2 and 5.

applicant is qualified in one of the ways prescribed in the first paragraph of section 7 of the Statute 33 Vict., chapter 14, with the proviso that residence in the United Kingdom, referred to in that paragraph, should be regarded as including residence in British India.<sup>18</sup> It is also," they said, "desirable that in such cases a reference should be made to the Political Officer attached to the State of which the applicant is a subject, in order that it may be ascertained that there is no local objection to the grant of a certificate. In the particular case under reference it has been elicited that no such objection exists, and consequently if the applicant fulfils the requirements of the first paragraph of section 7 of the Statute quoted above, the Bombay Government may, if they think fit, accede to his request for naturalisation."

§ 665. In a practically simultaneous case, however, a broader ruling was

The case of Shah Ram Lal of Jodhpur, given making no reference to the requirements of the English Naturalisation Act,—  
1892-93. the Statute 33 Vict., chapter 14, above cited. In December 1892 the Bengal Government reported that one Shah Ram Lal, a native of Jodhpur, who had resided in Calcutta for nearly 30 years, had applied for a certificate of naturalisation under Act XXX of 1852. In reply the Government of India said that *a certificate of naturalisation may legally be granted to a native of a Feudatory State, such as Jodhpur, and that the certificate might be given to Shah Ram Lal, provided that he was qualified under the Act of 1852, and that the Jodhpur Political Officer raised no objection.* "The necessary reference," it was said,<sup>19</sup> "in this and similar cases should be made through the Foreign Department of the Government of India." The notes written on this case alluded to a memorandum written by Mr. Ilbert, in which he had held that a subject of an Indian Native State is not a British subject for all purposes; that it would hardly be correct to describe him as an alien; that it would be impolitic to do any act which would amount to an admission that subjects of Native Indian States fall within the category of aliens; and that the subjects of these States belong to an intermediate class, which are described in some of the Foreign Jurisdiction Acts and Orders in Council made under them as 'British protected subjects,'—a class which is entitled under these Acts and Orders and under Treaties with Foreign Governments, to many, though not to all, of the privileges enjoyed by ordinary British subjects. On this it will suffice to observe that we have already abundantly shown that for certain purposes subjects of Native States are subjects also of Her Majesty; for those purposes, therefore, they are not aliens; but this does not prevent their being aliens in a restricted and technical sense of the term for the purposes of some particular Act in which the term occurs, as, for instance, for the purposes of the Indian Naturalisation Act of 1852, where the term occurs in the title and preamble. Here it is clearly to their advantage to hold them to be aliens in such a narrow sense because to do so is to enable them to acquire in British India the rights, privileges and capacities of a natural-born subject of Her Majesty. The memorandum written by Mr. Ilbert had been forwarded to the Government of India by the Secretary of State in a despatch No. 51, dated May 8, 1890, in connection with an application from one Kumar Bhabendra Narayan of Kuch Behar for a certificate of naturalisation under the Statute 33 Vict., chap. 14, with a view to qualify himself as a natural-born subject of Her Majesty for admission to the competitive examination for the Indian Medical Service. In the same despatch the Secretary of State proposed to have it declared by Statute "that natural-born subjects of Native Feudatory States are to be deemed to be natural-born subjects of Her Majesty, to the extent of qualifying them as far as natural-born British Indian subjects are qualified for employment in the civil branches of the Indian Service of Her Majesty." Before this, in paragraph 22 of their despatch No. 58, dated October 9, 1888, the Government of India had recommended, in connection with the proposals of the Public Service Commission,

<sup>18</sup> The first paragraph of section 7 of 33 Vict., chapter 14, stands thus :—

"An alien who, within such limited time before making the application hereinafter mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalised, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalisation."

<sup>19</sup> Pro., Internal A, April 1894, Nos. 91-92.

that the subjects of Native Princes in alliance with Her Majesty should be

The subjects of Native States are eligible for appointment to the Provincial Service.

eligible for admission to the public service in British India, provided they be qualified in other respects. This recom-

mendation was accepted by the Secretary of State in paragraph 27 of his despatch No. 104, dated September 12, 1889. And rule III of the rules for admission to the Provincial Service runs thus:—

“The subjects of Native Princes in alliance with Her Majesty shall be eligible for appointment, provided they are qualified in other respects.”

As certain appointments formerly reserved for the members of the Indian Civil Service and military and uncovenanted officers in certain commissions have been thrown open to the Provincial Service, it follows that subjects of Native States are eligible for the open appointments under the Provincial Service scheme.

§ 666. We are now in a position to state briefly the conclusions to which we have come regarding the civil and military employment of Ruling Chiefs and their

**Summary.**

subjects under the British Government. It will be remembered that the authority for what is said as to the enlistment of subjects of Native States in the British Army is to be found in paragraph § 152.

(1) *Honorary commissions in the British Army have been granted to Ruling Chiefs and leading men of Native States; but the acceptance of these commissions does not involve the discharge of any military duties.*

(2) *Very special circumstances are needed to justify the grant of honorary military rank to persons unconnected with the army.*

(3) *Subjects of Native States are eligible for enlistment as soldiers in the British service, but criminals or deserters from Native States Armies will be rejected. If relatives of Ruling Chiefs or other leading men of Native States join the British Army as Native officers, there are no arrangements by which they can obtain any special promotion.*

(4) *It is possible that a military career may have been opened to Rulers and leading men of some Native States by the organisation of the Imperial Service Corps.*

(5) *No principle has been laid down regarding the employment of Ruling Chiefs in civil affairs under the British Government, but on many occasions Ruling Chiefs have been appointed Members of the Legislative Council of the Governor-General.*

(6) *The subjects of Native States are generally eligible for civil employment under the British Government and in particular the Provincial Service is open to them. But the Indian Civil Service is limited to natural-born subjects of Her Majesty.<sup>20</sup>*

(7) *A certificate of naturalisation may legally be granted to a subject of a Native State who is qualified under Act XXX of 1852. The local Political Officer should be consulted before the grant of the certificate is made.*

(8) *Subjects of Native States on board ships of their own States on the high seas remain under the laws of those States.*

§ 667. It remains to notice the footing upon which the rulers and subjects of Native States stand in the prosecution of political cases in British territory. In paragraph § 624 we have explained what are the provisions of the Code of Civil Procedure in regard to suits brought by or against Ruling Chiefs. Sec-

Counsel may not appear in political cases, but petitioners may engage aid in preparing memorials.

tion 430 of the Code enables “alien friends” to sue in the Courts of British India as if they were subjects of Her

Majesty; and it is presumed that subjects of Native States, though, as already said, not aliens for all purposes, are “alien friends” for the purposes of this section. A Ruling Chief or subject of a Ruling Chief who is a party to a suit in a British Court of course has all the usual privileges of representation

<sup>20</sup> No ruling has been found on the question whether a Native State subject naturalised under 33 Vict, Chap. 14, would be eligible to appear at the open competition for the Indian Civil Service. Apparently the provisions of section 7 of that Statute would be practically a bar in most cases, though a boy educated at Harrow and Cambridge might have resided in the United Kingdom for five years.

by Counsel. But in political cases Counsel are not heard, and the rule is that petitioners or claimants must themselves address the proper authority.

§ 668. In 1882 during the minority of the Chief of Rewa, the widow of the late Maharaja, the Maharani Ranawat, claimed authority to exercise civil and criminal jurisdiction in her *jagir*. The claim was rejected and she employed a Mr.

Case of the Maharani of Rewa, 1882. Thomas, a Lucknow Barrister, to submit a memorial in her behalf. Mr. Thomas was referred to Sir Lepel Griffin, the Agent to the Governor-General, Central India, who told him that he could not "permit the intervention of any barrister or professional pleader in the political affairs of Central India," and that he could not entertain any further application forwarded by him on the subject of the Maharani's claim. Mr. Charles Grant, the Foreign Secretary, and the Viceroy, Lord Ripon, thought that *the Government of India is certainly entitled to demand that Native Chiefs shall address them direct*; but that Sir Lepel Griffin had laid down the doctrine in too unqualified a way. His action in rejecting the claim of the Maharani was approved, but nothing whatever was said officially about his letter to Mr. Thomas.<sup>1</sup>

§ 669. The next year the Madras Government reported that they had received memorials from a Dr. Kavanagh, a Barrister in London, touching the late Chiefship of Tanjore and the succession to the Banganapalle State. They informed Dr. Kavanagh that they could not re-open these cases which had long been settled. Soon afterwards the unsuccessful claimants in the Banganapalle succession case retained a Mr. Dawson, believed to be the editor of a London paper, to solicit a reconsideration of their claims by the Madras Government. On receipt of the memorial the claimants were told by the Madras Government that the Government declined "to receive communication from a Vakil who is not in India." The Madras Government inquired whether the Government of India had ever laid down any rule which would apply to these cases. The Government of India answered<sup>2</sup> that they usually required petitioners and claimants to address them direct, but that there was no objection to their seeking legal or other advice in drawing up their memorials.

§ 670. In 1884 the Thákur of Tharad, a petty Chiefship in Palanpur Agency, petitioned against certain orders affecting the exercise of jurisdiction in some 114 villages out of the 143 villages of which the Chiefship is composed. The old Rajput dynasty had been dispossessed for centuries, but its representatives, with some others, held most of the villages of the State by a strong subordinate tenure subject to the payment of an uncertain revenue. The Chief was the descendant of an usurping Governor, who had established his independence in the last half of the last century. The weakness of the ruling family in these circumstances prevented their exercising any effective jurisdiction in the villages known as *Jamiya* or revenue-paying villages held as just explained; and the jurisdiction was exercised on their behalf by a *thanadar* under the authority of the Political Agent. It was against orders maintaining this arrangement that the Thákur appealed without success, except so far that his right of jurisdiction was acknowledged, though the experiment of permitting him to exercise it was postponed to some safe opportunity. On November 17, 1884, Messrs. Jefferson, Bhaishankar, and Dinsha, Solicitors, Bombay, intimated to the Government of India that the Thákur of Tharad intended to depute "our Mr. Jefferson to personally represent to the proper authorities various matters in connection with the appeal." The Government of India, however, forwarded the letter of the firm for disposal to the Government of Bombay, to whom they had already communicated their orders. The firm addressed the Government of India again, repeating the request that Mr. Jefferson might have a personal hearing. "In reply," said Mr. Durand,<sup>3</sup> the Foreign Secretary, "I have to express my regret that I am unable to discuss the subject of the memorial of the Thákur Sahib of Tharad with Mr. Jefferson of your firm, since *it is contrary to the*

<sup>1</sup> Pro. A, Political I, July 1882, Nos. 41-54.  
Pro. A, General I, November 1883, Nos. 117-118.

<sup>2</sup> Pro., Internal A, January 1885, Nos. 103-117.  
For the case of 1845 from Kathiawar, see Pro., Internal A, June 1890, Nos. 218-221.



*practice of the Government of India to receive representations in such cases except through the established channel, that is to say, through the Local Government or Administration concerned."*

Similarly in 1885 when an agent and a pleader called at the Foreign Office to discuss the claims of a Kathiawar Chief for enhanced jurisdiction, they were informed that it is not in accordance with the practice of the Government of India to permit parties to plead their causes, either in person or by agent, and that no further visit to the Foreign Office could be permitted. Writing to the Government of Bombay the Government of India requested that the Political Agent might be directed to discourage missions of the sort, and to explain that the decisions of the Government of India are given upon the record only and that any representation which the Kathiawar Chiefs might wish to make should be transmitted to the Foreign Office through the usual channel.

§ 671. On consideration of these cases the practice<sup>4</sup> of the Government of India may be thus stated:—

Summary.

*The intervention of Counsel in political cases is not permitted, except in so far that parties may employ lawyers and others to aid them in the preparation of memorials, which, however, should be signed and submitted to the proper authority by the parties themselves.*

§ 672. In the years 1878 to 1880 inclusive the Government of India very

In political cases the reference of disputed questions of law or fact to High Courts is inexpedient and without legal sanction.

fully considered a proposal made by the Secretary of State, Lord Salisbury, in 1876, that Local Governments should be enabled to refer to High Courts disputed questions of law or fact in political cases. Lord Cranbrook, who succeeded Lord Salisbury on March 30, 1878, supported the proposal, and Lord Hartington, who succeeded Lord Cranbrook on April 28, 1880, was disposed to adopt the same opinion; the Governments, however, of Lord Lytton and Lord Ripon were alike opposed to it. A change of ministry having occurred in 1880, a full expression of the views of the Government of India was communicated to Lord Hartington on September 28, 1880, by the Government of Lord Ripon. "The proposal," they said, "to introduce this procedure originally referred to a particular class of cases that came before the Government of Bombay. These were the appeals to the Secretary of State from the petty Chiefships of Kathiawar; they were mainly of a quasi-judicial nature, involving complicated questions of local custom and the like: but the method of preparing these cases has of late been greatly improved; and under the new system of procedure sanctioned by Lord Cranbrook, the number of appeals will, in future, be greatly diminished. So far, therefore, as this class of cases is concerned, the discussion may be considered as terminated; and, under existing arrangements, the only cases likely to go before the Secretary of State on appeal are of a very different class. They belong to the category of political appeals proper, that is, they deal with the interests of Chiefs in regard to disputed successions, relations with their subordinate tributaries or feudal landowners, jurisdictions, boundaries, and various other incidents of political status and prerogative. Lord Cranbrook admitted that Courts of Justice are not the fit tribunals to decide such cases; but His Lordship observed that in many of them disputed questions of fact arose, and sometimes doubts as to points of Native law. And he concurred with Lord Salisbury in thinking that the hands of Government would be much strengthened if they were enabled to refer any such disputed questions of fact or law to the High Courts. Lord Cranbrook added that, although the urgent necessity for such a provision only arises now in the case of Kathiawar, he conceived that a general power thus given to consult the highest legal tribunals of the country would occasionally be found to be very salutary." It was intended that the power to submit a special case should be entirely optional and that the references should not include the whole appeal. The Government of India urged that in every disputed case, especially in cases of great political importance, the strongest pressure—a pressure most difficult to resist—would be brought to bear on them

<sup>4</sup> See also the case of the Agent of Rai Sree Dutt of Sakalana, which need not be stated—Pro., Internal A, July 1894, No. 459.

to obtain a reference to the Courts. It would probably be less invidious and less difficult to decide the case than to determine the issues; and the whole appeal would often depend upon the reference. In most cases between Ruling Chiefs and their subordinate feudatories the control of the affair would pass from the hands of Government to the hands of the Courts, and the jurisdiction of the Chiefs would be impaired and the influence of the Government and its political officers—formerly, in such matters, the recognised mediators—discredited. In disputed successions the rules and customs are not in a condition to be usefully dealt with by High Courts. New and foreign ideas and doctrines would probably be introduced, and unwritten customs substantially changed. Or, if institutions, at present varying and irregular, were stereotyped by judicial decisions in a particular mould, the effect would be to curtail the discretion of Government in the choice of qualified Rulers and to diminish the share of leading men in the determination of questions of vital interest to them and of which they are usually the best judges. Thus in the celebrated Karauli case of 1853-54 the electors set aside an adoption, and chose a distant kinsman of the late Chief—a man of full age. When objections were raised on points of Hindu Law they took the broad ground that it was better that the succession should fall to a grown-up man, fit to govern them, than to a child. If the case had come before a High Court, it might have been necessary either to disregard the opinion of the Court in a complicated issue touching the law of adoption, or to reject a candidate supported by the unanimous vote of the representatives of the State. “*Whereas*,” said the Government of India, “*the point of law is now usually a subordinate element in the determination of cases of high importance to the constitution of a State, this element would acquire predominance, and would be likely to outweigh all larger, though, perhaps, less distinctly definable considerations opposed to it.*” Moreover the Government and their feudatories might come to be arrayed against each other as litigants to the detriment of the good feeling existing between them and the degradation of the position of the Paramount Power. On such grounds the Government of India urged “that it would be most impolitic to introduce, for the sake of remedying a very minor and local inconvenience, a measure which might bring into jeopardy important principles underlying our relations with Native States throughout India.” Lord Hartington replied<sup>6</sup> on November 25, 1880,—“Your Excellency in Council,” he said, “expresses strong objection to such legislation, to which the Government of Your Excellency’s predecessor was also indisposed. Under these circumstances, although I am not satisfied that an enactment of the kind suggested need necessarily involve the serious consequences anticipated in your letter under notice, I will not press the proposal.” We may add that it has never been revived. In short, the case shows that *there are no provisions of the law under which disputed*

Summary. *questions of law or fact in political cases  
can be referred to High Courts; nor is  
it expedient that such provisions should be enacted.*

§ 673. In concluding this Chapter we may note that *in respect of transactions occurring and offences committed in Native States to British Courts in respect of things done in British India. British India, the subjects of Native States are amenable to British tribunals.* Section 2 of the Indian Penal Code enacts that every person shall be liable to punishment thereunder, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the territories to which the Code applies. Section 177 of the Code of Criminal Procedure requires that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed; and under section 179 of the same Code “when a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local

<sup>6</sup> The evils of referring questions of disputed successions in Native States to High Courts were also pointed out in a despatch of the Government of India, No. 138, dated August 20, 1868, which we have mentioned in paragraph § 213 above in connection with the Keonjhar succession and the repeal of Regulation XI of 1816.

The following is a list of the papers in the discussion of 1878-80 abstracted in the text:—

Pro., Judicial A, June 1879, Nos. 21-26.

“ “ October 1879, Nos. 27-28.

Pro., Judicial A, October 1880, Nos. 11-14.

“ “ March 1881, Nos. 22-23.

limits of whose jurisdiction any such thing has been done, or any such consequence has ensued." Section 10 of the Code of Civil Procedure is to the effect that "no person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts." Accordingly, a brother of the Maharaja of Jodhpur was in 1887 arrested at Bombay in a civil proceeding.<sup>6</sup> In 1886, Muhammad Akbar Khan, the almond agent of the Amir at Peshawar, refused to comply with the summons of the Court of the Munsif of Peshawar when one of his employes filed a suit against him for arrears of pay alleged to be due. The Punjab Government inquired whether the almond agent and the Amir's Post Master at Peshawar had any diplomatic status exempting them from the jurisdiction of British Courts. The Government of India in reply referred to the prosecution and conviction in a British Court of Mirza Baiza, the Amir's former Post Master, who was sentenced to two years' imprisonment for embezzlement. "The present Post Master and the Amir's almond agent," they said,<sup>7</sup> "enjoy the same status as Mirza Baiza held." In respect to amenability to British Courts, the subjects of Native States certainly have no better privileges than the subjects of the Amir of Afghanistan and its dependencies. The Thibaw Sawbwa, the Ruler of a Shan State, was compelled in 1882, long before the annexation of Upper Burma, to seek refuge in British territory because he had become an object of suspicion to the Burmese Government. In 1883, while living in a suburb of Rangoon, he suspected that some of his servants were plotting to poison him, and he shot two of them. For this he was tried and sentenced to death by the Recorder of Rangoon. In the first instance the Chief Commissioner commuted the sentence to one of transportation for life, but eventually the Sawbwa was released, with the approval of the Government of India, on condition that he would leave British territory and not return. Here jurisdiction was exercised by British Courts for acts done in British territory over a Chief who at the time did not, as a Chief, belong to the Indian system at all.<sup>8</sup> In 1892 the Bombay Government brought to notice that a subject of a Native State may commit a non-cognizable offence in the presence of a police officer, may give his name and address quite correctly, and then, if he be a resident of a Native State, go off to his home, where he cannot be reached except through the law of extradition, for the police officer would have no authority to arrest him without warrant. It is proposed to add to section 57 of the Code of Criminal Procedure a clause to the effect that if the offence is punishable with imprisonment for any term exceeding one month, and the residence of the offender is a place not in British India, and if the police officer has reason to believe that the offender, if permitted to return home, would not obey a summons to appear before a Magistrate to answer the charge, he may require him to execute a bond for his appearance with one or more sureties resident in British India.<sup>9</sup>

Finally, we may note that when the Government of India in 1894 addressed<sup>10</sup> the India Office on the subject of the legal position, for purposes of discipline, of the Imperial Service Troops when serving beyond the frontiers of the States to which they belong, the Legal Adviser of the Secretary of State held that these troops, when serving in British India, would still be under the military law of their own States, though no doubt they would, for some purposes, be subject also to the law of British India. "A soldier," he said, referring to soldiers of Imperial Service Corps, "who committed a crime in British India might be tried and punished by a British Indian Court."

<sup>6</sup> Pro., Internal B, April 1887, Nos. 428-435.

<sup>7</sup> " Frontier A, May 1886, Nos. 11-19.

<sup>8</sup> Pro., External B, Nov. 1884, Nos. 2-4.  
Pro., Secret E, Jan. 1887, Nos. 99-116.

<sup>9</sup> Pro., Internal A, June 1892, Nos. 410-411.

" " May 1893, Nos. 116-122.

<sup>10</sup> Despatch to Secretary of State, No. 9, dated January 24, 1894.  
Secretary of States' reply No. 17 (Secret), dated April 6, 1894.

## CHAPTER XX.

### THE POSITION OF BRITISH OFFICIALS, EUROPEANS AND THE LIKE IN STATE TERRITORY.

§ 674. In considering British jurisdiction in State territory we have fully explained how the Indian Criminal Codes and many other Acts of the Governor-General in Council apply as personal laws to European and Native British subjects in State territory. In a good many passages in this compilation we

#### Introductory.

have alluded to various duties of Political Officers and to some directions prohibiting certain conduct on their part. Thus we have shown that they may not enter into treaties or agreements with Native States except with the sanction of Government;<sup>1</sup> and that when disturbances are imminent they should use their influence on the side of the established authorities and, if necessary, interfere to preserve peace.<sup>2</sup> In Chapter XII, paragraphs § 372 to § 382 inclusive, we have described at length the duties of a Political Officer on the death of the Chief of a State to which he is accredited. We have now to complete our examination of the position of British Officials and of Europeans and some others in State territory; and we shall begin by describing some further duties of Political Officers which may appropriately be noticed in this place. In general, our present subject is the position of servants of the British Government and of Europeans, Americans and Australians while residing in State territory. But it often happens that the charge of a Political Officer includes a State or States in which he does not reside. He may reside in one of a group of States of which he has charge: or he may exercise his political control while residing in British territory. In these various cases his duties will be similar; so that in discussing the duties of a Political Officer the point of his actual residence in State territory is not material. Moreover here, as in many other places, it is not intended to exhaust the subject. We shall not attempt either to give a complete catalogue of the duties of Political Officers, or to say all that could be said as to the position of Europeans and the like in State territory.<sup>3</sup>

§ 675. Lord Lytton assumed charge of the office of Viceroy and Governor-General on April 12, 1876. Soon afterwards, on May 30, 1876, His Excellency called for a good deal of information about the Native States and amongst other things asked to be supplied with a collection of "all standing orders or instructions at any time issued to Political Agents" up to date. Mr. Thornton, the Officiating Foreign Secretary, in compliance with this requisition submitted a circular of the Government of India of 1842, a demi-official letter of Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, dated November 18, 1843, and the instructions given by Sir J. Malcolm to the officers serving under his orders in Central India. Mr. Thornton also gave a list of general orders and said that an intention,<sup>4</sup> entertained in 1857, to compile a code of standing orders and instructions to Political Officers had never been carried out. He further referred to a collection of political cases "which, when complete, it was proposed to circulate to Political Officers confidentially." No doubt he here alluded to the "Leading Cases" of Sir Mortimer Durand which are the foundation of the present volumes.

§ 676. The circular of 1842 is worth transcribing, for there is no reason to think that the instructions which it contains, though old, are obsolete. It was

<sup>1</sup> Paragraph § 17.

<sup>2</sup> Paragraphs § 307, § 308, § 314.

<sup>3</sup> We have purposely omitted the case of Jules Le Grand (Pro., Secret I., March 1891, Nos. 1-4). There is a leading case on record in the Foreign Office, on the principles there involved, which may be referred to, if necessary.

<sup>4</sup> The suggestion for such a code was originally made by the Court of Directors in a despatch dated December 29, 1854. After some correspondence the matter was dropped during the pressure of business consequent on the Mutiny. See Foreign Consultations, November 7, 1856, Nos. 16-17; March 6, 1857, No. 191; February 12, 1858, Nos. 37-38; November 11, 1859, No. 131; December 9, 1859, No. 49.

dated April 26, 1842, two months after Lord Ellenborough had become Governor-General. We reproduce it in full :—

“The Governor-General deems it expedient that the conduct of all Political Agents of the Government should be guided by one clearly understood principle, and I am therefore directed to convey to you the following instructions for your future observance.

“The Governor-General enjoins that you will, on all occasions, manifest the utmost personal consideration and respect for the several Native Princes with whom you may communicate. You will consult and attend to their personal wishes. You will give them, whenever you may be requested so to do, or whenever it may appear to you to be required for their interest and that of the British Government with which theirs is practically identified, such advice as may seem to you best calculated to conduce to their comfort, to their prosperity, and to their honour; but you will not unnecessarily intrude with such advice on occasions not requiring it for such high and just objects, but leave them, in the ordinary concerns of their families and their courts, not only without control but without observation.

“You will consider yourself to be placed near the Native Princes, to whom you may be deputed, as the representative of friendship, as much as of the power, of the British Government, and you will be mindful that even the necessary acts of authority may be clothed with the veil of courtesy and regard.

“You will distinctly understand that no further extension of its dominion forms a part of the policy of the British Government; that it is desirous, on all occasions, of respecting the independence<sup>6</sup> of Native States; and that, satisfied with the extent of its own rule, it has no other wish than that every State within the limits of India should freely exercise its rights, as recognised by treaty, and contribute by the maintenance, by its own means, of peace and good government in its dominion, to the general happiness of the whole people.

“But while you will proceed upon the conviction that these are the sincere wishes of the British Government, you will likewise understand that it will view with the severest displeasure such an exercise of its rights by any power as may have a tendency to disturb the public peace of India.

“Such disturbance of the public peace of India, whether effected by direct hostilities between States, or by the outbreak which the badness of a government may provoke or its badness permit, could not have existence without immediately affecting the interest of the subjects of the British Government, whom it is its first duty to protect.

“But the Governor-General feels that the Government has yet another duty to perform: that, placed in the possession of great power, it is deeply responsible to Providence for the exercise of that power in such manner as may most conduce to the happiness of all the tribes and nations within the limits of India, under whatever form of rule they may severally be placed.

“The Governor-General has advisedly selected the moment of victory for laying before you, for your guidance, these principles of justice and moderation; they are the principles upon which his policy will ever be founded, adopted upon deliberate reflection, and as little liable to be changed by reverses as they have been by success.

“You are directed to communicate the purport of this despatch, directly or through your subordinates, to all the Princes and Chiefs with whom you are deputed to communicate.”

§ 677. It is not necessary to quote the whole of Mr. Thomason's letter of Nov-

Mr. Thomason's letter of 1843 to Sir Henry Lawrence.  
Henry Lawrence.

ember 18, 1843, to Sir Henry Lawrence. Some of it is hardly applicable to Native States at the present day; other passages consist rather of general advice which might be given to any official than of remarks for the guidance of a Political Officer: and as containing general instructions the letter has this defect, that it was addressed to Sir Henry Lawrence when about to go to Nepal as Resident,

<sup>6</sup> See paragraph § 35 above. The word “independence” is technically incorrect; we may now read “sovereignty.”

whereas Nepal is not a State of the internal protectorate, and the advice given to a Resident in Nepal would nowadays certainly differ very materially from the advice given to a Resident in Kashmir or Jaipur or Gwalior. But some of the remarks made appear to have a general and lasting value, and at any rate, deserve consideration. "Your duties at Nepal," said Mr. Thomason, "will be two-fold, *viz.*, to watch any movements on their part which may be injurious to us, and to offer counsel to them in all State matters in which we may not be concerned, whenever such counsel is sought, or is likely to be acceptable and useful. In the first duty you will have to keep the mean between too great confidence and too ready suspicion. . . . The duty of advice is the most important and delicate which it falls to the part of a Resident at a foreign Court to perform. The establishment of such an influence as shall make his advice solicited and desired is not to be reduced to rule, or inculcated by precept. Most perfect openness and honesty I believe to be the first requisite. Evenness of temper, courtesy of demeanour, the absence of dictation or obtrusiveness, are qualities which naturally suggest themselves to the mind of all. We profess to leave the Nepalese entirely to govern themselves; and the only cases in which it is incumbent upon us to advise, remonstrate, or dictate, are when our own interests require such interposition. But the Government would be ill represented if every valuable opportunity were not used to prompt to that which is good, and to deter from that which is evil; to express abhorrence of acts of cruelty, perfidy, injustice; to give full approbation of all that is benevolent, honest, high-minded, and just. The main object is to identify oneself with the real and best interests of the State. When they feel that such is really the case, and that the object is worked out in a kind, conciliatory, and single-minded manner, considerable influence will probably be obtained. But all must be open and aboveboard. We can never match the natives in intrigue; and when we attempt to meet their machinations by counter-intrigue, we shall be foiled and discredited."

It follows from the division of sovereignty in varied proportions between the Paramount Power and the subordinate States that there are many cases in which it might be our duty to offer advice entirely in the interest of the State itself and not at all because any imperial interest required our interposition. But that a Political Officer should identify himself with the real and best interests of his State, no one will dispute.

§ 678. The instructions of Sir John Malcolm to the officers serving under him

Sir John Malcolm's instructions to his subordinates, 1821. in Central India bear date June 28, 1821. It is acknowledged that they were extremely well suited to the time and place; and they may now be read with profit and interest by Political Officers. The instructions have been published in Sir John Malcolm's "Central India," and as they are accessible in that book we will not reprint them. His general remarks on the foundations of our power, our system of rule and the feelings of Natives of India are not such as would describe the present position. What he says on his perhaps most important topic—interposition in the affairs of Native States—has chiefly a local and temporary application to the condition of Central India just after the pacification which followed upon the Pindari War. One passage, however, of general and permanent significance may be quoted here,—a passage which forcibly portrays the mischief of minute interference in the details of internal administration. "It is evident," says Sir John Malcolm, "that our control can only be supportable to any human being who has the name and appearance of power, so long as it is exercised in a general manner and regulated by the principles above stated":—that is, by the principles of supporting the dignity and authority of Ruling Chiefs, of acting in their names if we aid them against their subjects, and of preventing our subordinates from slighting theirs. When our control "descends to minute checks and interference in the collection of revenue and the administration of justice; listens to the complaints of discontented or even aggrieved individuals; and allows upon system its own native agents to interfere and act in the name of the paramount State,—the continuance of independent powers, in any shape, to either Prince or Chief, is not only impolitic but dangerous, as his condition must be felt by himself and by all attached to his person or family as a mockery and degradation; and the least effect of such feelings will be the extermination of all motive to good or great actions.

For when control is divested of its large and liberal character, and takes a more minute shape, whatever merit belongs to the administration becomes the due of the person by whom it is exercised, or his agents, and the nominal Prince and his officers are degraded into suspected and incompetent instruments of rule." For the rest, Sir John Malcolm dwells upon the means to be employed for maintaining peace, the evils of impressing carriage and labour, and particularly upon the importance of frequent and direct personal intercourse, both in private and in public, with the inhabitants of Native States, and of a conciliatory manner in that intercourse founded upon adequate knowledge of native character and adjusted to the expectations of classes differing in rank and, in degree of civilisation. These are matters upon which it is unnecessary to enlarge, particularly in view of the stress laid in Lord Ellenborough's orders of 1842 and in Mr. Thomason's letter of 1843 upon the duties of courtesy and consideration.

§ 679. In connection with all of these papers it is worth noting that when the old general instructions approved by the Government of India in 1874. the Government of the Straits Settlements asked in November 1874 to be supplied with "copies of any rules or regulations or printed code" which might be in existence in India for Residents at Native Courts, the Government of India sent them the Ellenborough circular, the Thomason letter and the Malcolm instructions. As to the view taken twenty years ago of these papers, the Government of India wrote—"The circumstances of the Native States with whom this Government has to deal are so various that it would be impossible to devise a set of rules which would be applicable to all alike. The most that can be done is to indicate generally the spirit in which Political Officers are expected to conduct their intercourse with Native Princes and Chiefs, and to treat each case, in which a ruling is required, as it arises, having due regard to the general principles of policy by which the Government of India is guided. As to the first point, namely, the conduct of Political Officers in their dealings with the Native Chiefs and people, a better exposition of the views of this Government could not be found than the circular letter, dated 26th April 1842." The Thomason letter was described as "valuable" and the Malcolm instructions were said to be "excellent." In regard to the judicial powers of Political Officers the Government of India referred to the then lately enacted Foreign Jurisdiction and Extradition Act of 1872 and promised to send the rules under that Act when framed. Further, as an illustration of the method in which a definite procedure is prescribed in cases which are susceptible of such treatment, the Government of India forwarded to the Government of the Straits Settlements the rules for the settlement of boundary disputes between the States of Rajputana and the rules relating to the constitution and working of the Rajputana Courts of Vakils.<sup>6</sup>

§ 680. There is one more old order which it seems worth while to cite in this place. The Government of India in reply to inquiries from Mr. Cavendish, Resident at Nagpur, informed him that it was optional with the Raja of Nagpur to consult him or not, but when His Highness did so, it was his duty to exercise his discretion and give such advice as might be proper, and that there could be no objection to a cordial intimacy with the Raja, nor to the Resident's giving good advice, when the Raja might seek it. "These instructions to Mr. Cavendish," said the Court of Directors<sup>7</sup> in 1838, "were highly proper, and we may add to them that even when the Resident's advice is not solicited by the Raja, it is his duty to make such representations as may be called for by notorious facts or by the general character of the Raja's administration; but not to receive individual complaints nor in any way implicate himself in the responsibility of particular measures of government." These orders, however, must not be construed to imply that a Political Officer is always bound to give advice whenever a Ruling Chief asks for it. Circumstances might easily arise in which it would be the duty of a Political Officer to refuse to give any advice.

<sup>6</sup> Pro., Political B, February 1875, Nos. 95-96.  
 .. Secret I, June 1888, Nos. 74-76.

<sup>7</sup> Despatch of the Court of Directors, No. 11, dated February 2, 1838, paragraph 98.

§ 681. Looking generally at all the time-honoured instructions of 1821, 1838, 1842, and 1843, perhaps their pith may be thus expressed :—

Summary.

*The dignity of Ruling Chiefs should be upheld in all dealings with them and with their subjects. The authority of Ruling Chiefs and that of their officials must not be undermined by minute interference in the details of internal administration. The offer of advice should spring from the duty of maintaining the peace of the country, and from unremitting consideration of the best interests alike of the British Government and of the Native States.*

§ 682. So much has been said to show the general attitude which it is believed that Political Officers will assume in conducting their business with Native States. No attempt will here be made to give an exhaustive account of

Instructions relating to particular orders passed from time to time instructing matters of conduct. Political Officers on particular matters

of conduct. But a few of the more important of these orders may be usefully mentioned here; and we will begin by noticing a matter treated in the Leading Cases of 1875, that of guaranteeing loans to Native States.

We have mentioned in paragraph §67 the circumstances under which Nawab Faiz Ali Khan became Minister of the Kota State. In 1874, the Kota finances being in an embarrassed condition, a banker named Seth

Political Officers must not guarantee loans to Native States. The Kota case, 1875. Samir Mal undertook to make a loan to the State on the guarantee of the British Government. A formal agreement was

prepared and accepted by the Minister. This provided that Samir Mal should lend the Kota State as might be required any sum or sums up to an aggregate amount of five lakhs of rupees at 6½ per cent. interest per annum. A part of this document ran as follows :—

“ Upon the administration of the Kota State ceasing to be carried out on its present basis, any balance due to Seth Samir Mal on account of loans under this agreement will either be paid up in full or by such instalments as may seem to the Agent to the Governor-General reasonable and proper. If necessary, the assistance of the Political Agent will be given to ensure the due payment, with interest at the above rate (6½) six and a half per cent. per annum, of such instalments by the Kota Darbar.”

Sir Lewis Pelly, the Agent to the Governor-General, intended to countersign this agreement, but by oversight omitted to do so, and it was re-submitted to his successor, Mr. Alfred Lyall. Mr. Lyall informed the Political Agent that countersignature did not appear to be necessary, but that as Sir Lewis Pelly had obviously intended to ratify the agreement, it might be considered to have received the approval of the Agent to the Governor-General. The correspondence in the case was then submitted to the Government of India, whose orders were thus worded :—

“ It occurs to the Governor-General in Council that it might be possible even now to cancel the engagement with the Seth and commute the advance into a State loan, in which case, as the Government would lend the money at 5 per cent., the State of Kota would save 1½ per cent. interest. If this can be managed, the arrangement will be better for Kota and not more onerous for the Government of India.

“ His Excellency the Viceroy and Governor-General in Council is opposed to the policy of guaranteeing loans by bankers or others to Native States, and such guarantees should never be granted without the previous sanction of Government. In the present case the arrangements have gone too far to be disallowed, but it will be necessary, in consequence of what has been done, to exercise a more direct interference in the financial affairs of the Kota State than was considered in the first instance desirable. . . . ”

§ 683. We have discovered that the principle of these orders, so far as they affect the question of guarantee, was affirmed so long ago as 1832. In that year a question arose whether Mr. Cavendish, the Political Agent and Super-

\* Pro., Political A, February 1875, Nos. 8-10. This is one of the Leading Cases of 1875, the quotations being the same as then used. But it has been so much condensed that it cannot be shown in brackets.

\* Political Consultations, October 8, 1832, Nos. 4-8. The orders of the Government of India in this case were approved by the Court of Directors in paragraph 21 of their despatch No. 52 of 1835.



intendent at Ajmere, had guaranteed a loan of Rs. 54,000 made by some Native bankers at Ajmere to Raja Kalian Singh of Kishangarh. Mr. Cavendish had certainly attested a registered bond for the amount, and it appeared that the bankers would not have advanced the money without his signature. In consequence of this transaction a circular, dated October 8, 1832, was issued to Political Agents in these terms :—

“I am directed by the Hon’ble the Vice-President to inform you that you are hereby strictly prohibited, without the sanction of Government obtained expressly for the purpose, from affixing your signature to bonds or otherwise interfering in any pecuniary dealings between parties, one or both of whom are not subject to the direct authority of the British Courts of Law.”

§ 684. A few years later in another somewhat similar case the Court of Directors gave strict orders against supporting the pecuniary claims of individuals against Ruling Chiefs. A banker named Behari Lal claimed the interference of the British Government to enable him to recover twenty lakhs of rupees which he had lent to the King of Oudh on the ground that he had waived realisation to aid the King in lending a full crore of rupees to the British Government, and that this abstention was due to a guarantee obtained from Mr. Ricketts, the Resident. The Court of Directors found that the guarantee was not proved and declined to sanction further interference—some had already taken place—on behalf of the banker. In paragraph 19 of their despatch No. 35 of May 31, 1838, they said—“We consider this case as another example of the embarrassment arising from an infringement of the salutary policy of abstaining from all interference in respect to the affairs of creditors of Native Princes. And we take this occasion to renew our reiterated orders that under no circumstances are the good offices of the British Government to be held out for the adjustment of any claims founded on pecuniary transactions between individuals and Native States. You will impress upon the minds of all Residents and Political Agents the necessity of an inviolable adherence to this injunction, any departure from which will incur our most serious displeasure.” Circular orders were issued in October and December 1838 in accordance with these directions.<sup>10</sup>

At the present day the situation differs because under certain circumstances Ruling Chiefs, with the sanction of Government, may be sued in British Courts. The existing practice of the Government of India has been described in the preceding chapter relating to the position of Ruling Chiefs and their subjects in British territory (*vide* paragraphs § 631 and § 633).

§ 685. Apart from the question of guaranteeing loans, there is an old case of 1875, entered in Sir Mortimer Durand’s volume, which shows the Government of India are opposed to guarantees of engagements between Ruling Chiefs and their subjects being given by Political Officers. In paragraph § 46 we said that in 1870 the differences between the Thákurs and the Darbar of Bikanir were temporarily removed by the mediation of Captain Powlett. In the course of the correspondence of 1871 on Bikanir affairs the Government of India noticed the fact that the engagement mediated by Captain Powlett between the Maharaja and his Thákurs had been guaranteed by Lieutenant Burton, the Political Officer at Bikanir, with the view of inducing the Thákurs to come in. His Excellency in Council remarked that Lieutenant Burton appeared to have been actuated by the best intentions, but referred to the guarantee as a grave error, and expressed a hope that it was understood to be only temporary “pending the settlement of the present quarrel.” Such guarantees are, as a rule, embarrassing. They necessitate perpetual and worrying interference on the part of Government, and should, if possible, be avoided.<sup>11</sup> This view, advanced in the note of the Foreign Secretary, Mr. Aitchison, seems to have been implied, but was not actually expressed, in the official orders.

<sup>10</sup> Political Consultations, October 3, 1838, Nos. 5-7; and December 5, 1838, No. 33. Despatch of the Court of Directors, No. 35, of May 31, 1838.

<sup>11</sup> *Pro.*, Political A, October 1871, Nos. 568-598.

§ 686. It is obvious that the Government may also be embarrassed by Political Officers accepting the position of arbitrators in disputes between British subjects and Ruling Chiefs.

Political Officers must not act as arbitrators in disputes between British subjects and Ruling Chiefs.

Dr. Williams entered into a contract to furnish the Burmese Government with a foundry for the manufacture of iron. By the close of 1874, Dr. Williams had received Rs. 4,40,000 from that Government and had delivered sundry portions of the machinery, but there still remained a considerable portion undelivered. A long dispute was the result; and in 1876 Dr. Williams and the Burmese Government agreed to refer the matter to the arbitration of Lieutenant-Colonel Duncan, Resident at Mandalay. Lieutenant-Colonel Duncan gave

The case of Dr. Williams, 1878.

an award from which Dr. Williams appealed to the Government of India. They held that they had no concern with the matter and that it was not desirable to interfere with the award. In consequence of this case they issued, on July 13, 1878, general instructions to all Political authorities in these terms<sup>12</sup>:—

“The Governor-General in Council has no wish to debar a Political Officer from lending his advice and influence for the equitable adjustment of claims or disputes between British subjects and the State to which he may be attached. But assistance of this kind which follows naturally from an officer’s position as the representative of the British Government, is of a nature very different from the assumption of the duties of an arbitrator, who renders a formal award: such functions are inconsistent with the attitude which a Political Agent would do well to preserve; for his award is very likely to cause dissatisfaction, and even mistrust, to the disappointed party; and he may thus run some risk of compromising his position and influence. For the future, therefore, it should be understood that a Political Officer must not undertake any arbitration of this nature without the special sanction of the Government of India.”

§ 687. Another case in point occurred in 1883. In that year a Mr. Larminie advanced claims against the Maharaja of Hill Tippera on account of the alleged

The case of Mr. Larminie, 1884.

breach of a cotton contract and the cancellation of a *khedda* lease. The Maharaja declined to appoint arbitrators, but was willing to abide by the decision of Mr. Hopkins, Magistrate of Tippera and *ex officio* Political Agent for Hill Tippera. The Government of India thought that this arrangement was open to serious objection and preferred not to sanction it. “There seems,” they said, “to be no clear reason for the Maharaja’s refusal to appoint independent arbitrators, which would apparently be the most satisfactory solution of the difficulty. If, however, His Honour the Lieutenant-Governor considers that there is no prospect of the Maharaja consenting to such a course, and that the appointment of Mr. Hopkins is in fact unavoidable, the Governor-General in Council will be prepared to reconsider the matter.” The Maharaja, however, then agreed to the appointment of independent arbitrators, and so the case ended.<sup>13</sup>

§ 688. In 1890, when a jeweller of Vizianagram claimed the price of certain

The Nilgiri case, 1890.

articles of jewellery for which the Raja of Nilgiri, one of the Orissa Tributary Mahals, had given a bond, the Government of India approved a proposal<sup>14</sup> of the Bengal Government that each party should have an arbitrator, but with reference to a suggestion that the Superintendent of the Mahals should be the third arbitrator, called attention to the correspondence abstracted above and said that the Superintendent might appoint the third arbitrator though he should not himself act in that capacity.

§ 689. There are orders of very old standing but still in force forbidding

Political Officers must not execute commissions for Ruling Chiefs.

Political Officers to execute commissions for Ruling Chiefs. They were circulated anew on June 18, 1878, as it was thought that being of old date they might possibly be unknown to many officers then in political employ. The original circular so re-issued was No. 1016, dated April 7, 1851, and runs thus:—

<sup>12</sup> Pro., Political A, July 1878, Nos. 68-78. In the Madras Presidency sanction may be given by the Madras Government. Pro., Political A, November 1878, Nos. 17-18. <sup>13</sup> Pro. A, Political I, January 1884, Nos. 34-38. Pro., Internal A, September 1884, No. 125. <sup>14</sup> Pro., Internal B, February 1890, Nos. 466-471.

"The Governor-General's attention having been drawn to a practice which prevails of Residents or Political Agents executing commissions for the Chiefs to whose Court they are accredited, I am directed to intimate to you that His Lordship disapproves of such officers becoming the medium of obtaining articles for Native Chiefs, and you are requested to decline undertaking any such commissions <sup>15</sup> in future."

§ 690. General orders were issued in 1832 pointing out that the practice of borrowing elephants, etc., from Native Chiefs was objectionable. This and similar matters are now regulated by a circular of June 30, 1873, which may be copied in this place:—

"A statement lately appeared in a vernacular newspaper, the *Shamsher Bahadur*, to the effect that the European Rules regarding the use of Darbar and Native officials of the Kathiawar Agency are in the habit of requiring Princes and Chiefs to supply them with vehicles and animals. On inquiry this statement proved to be unfounded.

"The attention of the Viceroy having been thus drawn to the question, His Excellency deems it expedient to take the present opportunity of making Political Officers acquainted with the views of Government as regards the acceptance by them of the loan of carriages, horses, elephants, etc., belonging to Darbars.

"On occasions of State ceremonial or when a rapid and long journey has to be made exceeding the capability of a reasonable private establishment, and when no other means of locomotion are available, His Excellency is of opinion that Political Officers may occasionally avail themselves of the proffered assistance of Native Chiefs. Such courtesies, however, should be accepted as seldom as possible and only under circumstances in which an English gentleman would accept similar civilities from another without incurring an inconvenient obligation.

"The habitual use of the Darbar vehicles and animals is entirely prohibited by Government, and His Excellency has sufficient confidence in the good sense and honour of Political Officers to be assured that they will in this respect not expose their conduct <sup>16</sup> to misconstruction."

§ 691. In connection with certain occurrences, which it is unnecessary to describe, a Notification, No. 900, dated December 31, 1859, was issued, with the approval of Lord Canning, to restrict, amongst other things, the borrowing or lending of money by Political Officers. The Notification may be quoted in full as there seems no reason to suppose that it is obsolete:—

"It has been brought to the notice of the Governor-General that public officers in some parts of India are in the habit of overdrawing their accounts with Native bankers and other persons residing, or carrying on business, within the limits of their jurisdiction.

"This practice is entirely opposed to the orders of the Government, and is expressly prohibited by section 3, Regulation VII, 1823, of the Bengal Code.

"This section is now republished for general information and guidance:—

"All Judges of Zilla and City Courts, all Magistrates, Joint Magistrates, Registrars, and Assistants to Magistrates, all Collectors and Deputy Collectors of the Land Revenue, all Assistants to such Collectors or other officers exercis-

<sup>15</sup> Pro., Political B, August 1878, No. 155.

The circular in force is No. 1240-1241-P., dated June 18, 1878. Deposit Pro., July 1879, Nos. 197-198, have not been overlooked, but it was specially noted at the time that the case was not to form a precedent. There are numerous old orders absolutely forbidding the sale of property by British officers to Ruling Chiefs and others, but they have not been entered as they are probably superseded by Home Department Resolution No. 1437, dated September 23, 1881, applicable to European public servants of all descriptions. A list of these old orders is, however, given here for reference in case the subject should again call for general treatment at some future date:—

Political Consultations, October 31, 1821, No. 107.	Foreign Consultations, July 28, 1854, No. 11.
" " " " " " " " " " " "	" " " " " " " " " " " "
Foreign " " " " " " " " " " " "	" " " " " " " " " " " "
December 3, 1832, " 11.	June 15, 1855, Nos. 91-92.
February 27, 1853, " 185.	February 22, 1856, No. 30.

<sup>16</sup> Pro., Political A, June 1873, Nos. 513-516. The circular is demi-official. See also on this subject:—Foreign Department Circular No. 961, dated February 15, 1856, and Foreign Department letter to the Agent to the Governor-General in Rajputana, No. 2140, dated April 30, 1861, relating to the use of Darbar elephants, cattle and equipages. These old orders appear, however, to be superseded by those of 1873 quoted in the text. (Foreign Consultations, February 15, 1856, No. 63, and Foreign Proceedings, Part A, April 1861, No. 305).

ing the powers of such Collectors, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring any debt to, any *zamindar, talukdar, rayat* or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division to which their authority may extend.<sup>17</sup>

“Officers politically employed were prohibited by the orders of the Government of India, dated the 22nd March 1845, from borrowing money of, or lending money to, any Natives of India resident within their respective political circles.<sup>17</sup>”

“The Governor-General now calls the attention of all officers of Government employed in any civil or political capacity in any part of India to these express prohibitions, and warns them that by any infraction thereof, whether by overdrawing accounts with bankers, or in any other way, they will incur the severe displeasure of the Government.

“Residents, Agents, Commissioners and other controlling officers will be held responsible for checking any departure from the strict letter of this order on the part of their subordinates.”

We may add here that a Resolution<sup>18</sup> of the Government of India in the Home Department, dated March 16, 1888, laid down certain rules on the present subject which are binding on Political Officers equally with others. These rules are—

“I.—All Covenanted Civil Servants, Statutory Civilians, Uncovenanted Officers who hold gazetted appointments and Military Officers in civil employ are prohibited under pain of dismissal from taking loans from, or otherwise placing themselves under pecuniary obligations to, persons subject to the official authority or influence of such Government officers, or residing, possessing property or carrying on business within the local limits for which such Government officers are appointed.

“II.—This prohibition does not extend to transactions in the ordinary course of business with Joint Stock Banks and British firms.”

§ 692. We may also cite here Foreign Department circular No. 1299-G., Rules relating to the acceptance of presents. dated June 20, 1876, on the subject of the acceptance of presents. We need not reprint the provisions of the law quoted in the circular. As is very well known, they prohibit the acceptance by any officer serving under the Crown in India of any presents “from any of the Indian princes or powers, or their ministers or agents or any of the Natives of Asia,” and declare the acceptance of a present by any such officer to be a misdemeanour. The circular stands thus:—

“I am directed to forward, for your information and guidance, and communication to your subordinates, the following summary of the existing law and rules regarding the acceptance by Government servants of presents from Native Chiefs and others.

“I.—The main provisions of the law on the subject are contained in 13 Geo. III., chap. 63, sections 23-24; 33 Geo. III., chap. 52, sections 62-63; 3 and 4 Will. IV., chap. 85, section 76.

“II.—The prohibition of the receipt of presents from Native Chiefs and others does not extend to the receipt of a few flowers or fruits, and articles of inappreciable value, although even such trifling presents should be discouraged.

“III.—It does not extend to the exchange of presents between Governors, Lieutenant-Governors, Chief Commissioners, Agents to the Governor-General or Political Officers generally in their ceremonial intercourse with Native Chiefs, on which occasions the presents from the Chiefs are deposited in the Government *Toshakhana*, and return presents are given at the Government expense.

“IV.—It does not apply to presents to Medical Officers made *bonâ fide* for services rendered:

<sup>17</sup> For the Notification copied in the text, see Foreign Consultations, March 2, 1860, Nos. 177-193. The circumstances under which these orders were issued appear in despatch to the Secretary of State, No. 6, dated January

21, 1860, and his reply No. 37, dated May 2, 1860. For the orders of 1845, see Circular No. 744, dated May 25, 1845. Foreign Consultations, March 22, 1845, Nos. 2-4 April 18, 1845, No. 48; May 23, 1845, Nos. 11-13.

<sup>18</sup> Home Department Pro., Public, May 1888, Nos. 163-181.

"V.—The general prohibition extends to all servants of Government, European or Native, Covenanted or Uncovenanted, in whatever department they may be serving.

"VI.—Where presents cannot absolutely be refused without giving offence, they must be delivered up to Government, and to this rule no exception whatsoever is permissible save with the express sanction of His Excellency the Governor-General in Council, which will only be given under very special circumstances.

"The Governor-General in Council desires that the above rules may be strictly observed, and no deviation therefrom permitted, except with the previous sanction of the Government of India."

§ 693. The rules regarding the remuneration of Medical Officers for attendance on Native Chiefs and nobles and native gentlemen of high position in Native States<sup>19</sup> were promulgated, by Home Department Notification No. 437, dated July 25, 1893, in these terms:—

"When a Native Chief or noble or gentleman of high position desires the professional attendance of any Medical Officer of Government, the latter will be at liberty to attend him, provided that such attendance does not interfere with the due performance of his ordinary duties. The special permission of the Local Government will, however, be necessary when such attendance involves the absence of the officer from these duties for any substantial time.

"The Native Chief, noble or gentleman may offer any Medical Officer of Government attending him such fee as he thinks fit. The offer made will be reported by the Medical Officer through the Political Agent, or other Officer of Government exercising political functions in the State of which the said Chief, noble or gentleman is a resident, for the consideration of the Local Government within whose jurisdiction the Native State is situated. In reporting the offer the Medical Officer will state, so far as he is able to do so consistently with his position as a medical adviser, the nature and extent of the relief afforded, the importance of the case from a professional point of view, and the circumstances under which he attended the patient. The Political Agent or Officer forwarding the report will submit it with such remarks as he considers necessary. The Local Government shall have authority to sanction the acceptance of any fee so reported unless the amount appears to be out of proportion to the relief afforded and to the circumstances of the case, in which event the matter will be submitted, with the Local Government's opinion, for the consideration and orders of the Government of India.

"The report prescribed in the preceding paragraph will not be required from a Medical Officer in the following cases:—

"(1) When the officer names his own charge in accordance with a scale which he has fixed for his patients generally who are not Native Princes or Chiefs and when such charge is accepted by the patient; and

"(2) When the officer and patient reside in the same station and the fee does not exceed Rs50 for each visit, or Rs1,000 in the aggregate for repeated visits during the course of a year.

"For the purposes of this notification the term 'Local Government' will be held to include an Agent to the Governor-General and a Resident of the 1st class."

§ 694. As to the holding of land by certain servants of Government the orders of the Government of India are brief, clear and decided. We may add that they are founded on orders of the Secretary of State.<sup>20</sup> They are contained in a Home Department circular of May 13, 1885:—"Civil servants and military officers in the actual service of the Crown in India are prohibited from holding lands in a Native State for any purpose whatever. This prohibition does not

<sup>19</sup> Pro., Internal A, February 1894, Nos. 43-46.  
<sup>20</sup> Home Department Circular No. 21-737-806, dated May 13, 1885, paragraph 7. Foreign Department Pro.,

General B, June 1885, Nos. 15-16. Secretary of State's despatch No. 22 (Revenue), dated November 25, 1862, paragraph 4.

extend to land occupied merely by buildings for residence and their appurtenances.”

§ 694 A. In 1875 the Government of India issued a circular calling for a statement showing how far the several Residencies occupied by Political Officers, and the articles of furniture in them were public or private property, or were provided by the Native State. On receipt of the replies the following Resolution, dated January 10, 1876, was issued:—

As a general rule Political Officers should not use Darbar houses or furniture.

“ It appears from the returns received that a great variety of practice prevails in different Political Agencies. In some places the houses occupied by the officers are private property, and are furnished by the officers themselves ; in a few they are the property of the Native States and are occupied by the Political Officers free of charge ; while in some instances, again, the Residency belongs to Government, and furniture is supplied by the occupant, who has also to pay rent. The Governor-General in Council considers it desirable to introduce, as far as it can unobjectionably be done, a uniform system which shall remove the possibility of Political Officers being placed in that position of dependence on the Darbar which the occupation of Darbar houses and the use of Darbar furniture free of charge may involve. Accordingly, His Excellency in Council directs that no Political Officer shall, under any circumstances, be allowed to have his house furnished by the Native Darbar. Public reception rooms may be provided with furniture at the expense of Government, but all other furniture must be supplied by the officer himself. Houses, as a general rule, should be provided by Government, and Political Officers should be charged with suitable rent.

“ The Governor-General in Council is aware that at some Residencies—such as those at Jaipur and Hyderabad—exceptional arrangements are in force which it would be inexpedient to disturb, and it is therefore his desire that, while the principles above laid down should, as a general rule, be kept in view, cases in which it is thought desirable to depart from them should be especially considered each on its own merits by the Government of India.”

Expenditure to be incurred in providing furniture for public reception rooms is sanctioned from time to time under the orders of Government. No fund is formed for this purpose nor is any charge made against the officers concerned, but they are expected to keep the furniture in repair at their own cost. Applications for the renewal of furniture must be accompanied by the report of a specially convened committee ; and grants for purchase or renewal will ordinarily be sanctioned only for the residences of Political Officers employed as representing the Government of India in foreign independent territory or in Native States in India.\*

§ 695. There are two Resolutions of the Government of India in the Home Department, which relate to applications to Ruling Chiefs and others for subscriptions. The first of these is No. 31—1217-42, dated July 11, 1885, and is thus worded:—

“ It has recently been brought to the notice of the Government of India that no rule exists regulating the circumstances under which officers of Government may apply to Native Chiefs for pecuniary contributions towards public objects. As it is for many reasons undesirable that such applications should be made except with the permission of superior authority, the Governor-General in Council is pleased to direct that in future no officer of Government shall ask or accept pecuniary aid or subscriptions from Native Chiefs or officials of Native States in pursuance of public objects, except with the sanction previously obtained of the Local Government to which he may be subordinate.”

The second Resolution, dated August 14, 1889, recited the purport of the above Resolution of July 11, 1885, and proceeded thus<sup>1</sup>:—

“ An instance has recently come to the notice of the Government of India in which a public servant accepted a donation from a Native Chief towards

\* Pro. A, Finance G, March 1883, No. 14.  
Pro. A, Finance I, June 1883, Nos. 1-2.

Pro. General A, May 1895, Nos. 53-83.  
<sup>1</sup> Home Department Resolution No. 25—1437-60,  
dated August 14, 1889.

a religious object in which he was specially interested. In the Resolution of 11th July 1885, applications for contributions to private or semi-public objects are not expressly condemned, but the objections upon which these orders are based apply with even greater force to such donations. The Governor-General in Council is therefore pleased to extend the orders contained in Resolution No. 31—1217-42 (Public), dated 11th July 1885, to applications for, or acceptance of, assistance towards private or semi-public objects.”

Another ruling of the Government of India on the subject of the collection of subscriptions appears to apply to Political as to other officers. A Home Department circular No. 36—2851-59, dated October 29, 1888, runs thus :—

“It has been brought to the notice of the Governor-General in Council that in some parts of the country officials have, without the consent of their

Officers of Government must not collect subscriptions for political purposes. superiors, exerted themselves in collecting subscriptions for the promotion of objects of a political character. It appears to the Government of India to be very inexpedient that Government officials should be permitted to interest themselves in the raising of subscriptions, and I am therefore to call the attention of His Excellency the Governor in Council to the desirability of taking such steps as will effectually put a stop to the participation by public servants in the collection of subscriptions intended to promote political purposes of any kind whatever. It is obvious that great abuses and misconceptions might arise from such action or from any indiscretion on the part of Government officials, between the public and private aspect of whose acts people do not always discriminate.”

We may also notice here a later and wider ruling. In September 1893

Political Officers must not influence Rulers or Ministers of Native States to subscribe to public or private funds. Mr. E. Kay Robinson, Honorary Secretary of the Committee of the proposed Pasteur Institute, suggested that an application from the Committee for subscriptions should be forwarded to certain Ruling Chiefs either through the Foreign Office or through Political Officers. The reply \* was that “although the Government of India have every reason to believe that such an institute might, if properly conducted, serve a useful purpose, it is against the policy of the Government of India to influence, in the slightest degree, the Rulers or Ministers of Native States to subscribe to public or private funds, however worthy their objects may be.” The course proposed, it was said, “would certainly be understood by the Chiefs as involving the exertion of a certain amount of influence on the part of Government.” In forwarding the correspondence to Political Officers for information and guidance the Government of India added that if Ruling Chiefs asked for advice in the matter, it would be best to say that no advice could be given and that the Darbars must act according to their own discretion.

§ 696. A circular of 1874 directed that whenever, in pursuance of any instructions issued by the Government of India, a communication is addressed by an officer of Government verbally or in writing to a Ruling Chief, a copy or report of the communication so made should be forwarded at once for the information of the Governor-General in Council. These orders were repeated without alteration in May <sup>2</sup> 1883 and September <sup>3</sup> 1890 and are still in force. On the latter occasion the Government of India went on to say :—“The Governor-General in Council believes it to be generally understood that except in very special circumstances copies of letters received from, or addressed to, the Government of India should not be sent to the officials of a Native State, but I am to take the opportunity of requesting that this point also may not be overlooked. In all ordinary cases the purport only of such letters should be communicated to Darbars, as far as may be, in the same language in which the views or orders of the Government of India are conveyed. As a general rule, it is desirable to avoid explaining in detail the reasons upon which the orders of the Government of India are based, and though such explanations are at times necessary, they should only be made with care and discretion.”

\* Pro., Internal A, October 1893, Nos. 132-135.

<sup>2</sup> Pro. A, General E, June 1883, Nos. 1-8.

<sup>3</sup> Pro., Internal A, September 1890, No. 176.

In a case of October 1891, which need not be stated, it was held that the practice above described might be conveniently observed in communication with political pensioners in British territory. \*

§ 696 A. In addition to the orders (mentioned in paragraph § 695) forbidding the collection of subscriptions for political objects, there are, of course,

Political Officers are under the rules of discipline generally applicable to public servants of like rank. many other general orders of Government which are binding as much upon Political Officers as upon any other public servants. In 1889 the Secretary of State\* observed that a certain officer had been under the impression that when his services were lent to a Company, he was at liberty to make his own arrangements as to remuneration, and that during such outside service he was not bound by the rules prohibiting Government officers from speculating or investing in commercial undertakings in the districts where they may be employed. In this connection the Secretary of State requested that the rules concerning the loan of Government officers to Native States, Municipalities and Railway and other Companies should be so modified as to make it quite clear (1) that the officers lent shall receive only the remuneration agreed upon or sanctioned by the Government of India in their behalf, and (2) that the officers lent remain, while on outside service, subject to the general and disciplinary rules which apply to officers on active service. Rules to this effect are now contained in the Civil Service Regulations.† If officers whose services are lent to Native States are under the general rules of the service, *a fortiori* must officers be under those rules who are actively serving in political employment in or in respect of Native States. Thus official reticence is inculcated, and the conditions are defined upon which officers are allowed to contribute to the press, in orders of 1843, 1847, 1875, 1878, 1884, and 1885, which are general in their application.† The rule as to the holding of land has been quoted in paragraph § 694; but doubtless Political Officers are also bound to obey the standing orders, promulgated with that rule, which regulate the connection of public servants in India with commercial investments and speculation.‡ These officers would be guided by the general rules which restrict the purchase and sale of valuable property, such as houses, horses and carriages from and to natives of India,|| and if any one of them wished to vindicate in Court any public act of his or his character as an official, he would have to apply for the sanction of Government as required by orders¶ of 1890. Any Civil Servant, whether he be a Political Officer or not, is suspended from duty if he becomes bankrupt,\*\* and Political Officers, like other officers, may not buy out their seniors†† or (subject to certain exceptions) accept addresses, testimonials or valedictory entertainments‡‡ for themselves. The restrictions upon attendance at political meetings, and the prohibition against taking part in the proceedings of a political meeting, or in organising or promoting a political meeting or agitation, §§ apply to Political Officers as to others.

§ 697. It will have been seen that the particular matters of conduct on which specific instructions have been given are of a miscellaneous character. There is only one more which we propose to notice before we summarise what we have said; and that is the duty of impartiality. When parties are arrayed against each other in a Native State it is so manifestly the duty of the Political Officer to refrain from taking a side that the point hardly needs illustration. It will

\* Pro., General B, October 1891, Nos. 126-132.

• Despatch No. 16 (Revenue), dated February 7, 1889.

† *Fide* Article 806, heads (iv) and (v).

‡ See Home Department Resolution No. 22 A., dated June 3, 1885, and references given in footnote \* on page 169 of this volume.

§ See Home Department circular No. 21—797-806 (Public), dated May 13, 1895; and for the application of these orders to the case of property held and managed by the wives of officers or other members of their families dependent on them, see Home Department circular No. 33—2105-14, dated September 11, 1888.

¶ See Home Department Resolutions No. 1437, dated September 23, 1881, and No. 53 (Public), dated January 20, 1883.

¶ Home Department circular No. 30-Public—1676-1685, dated September 15, 1890.

\*\* Home Department Notification No. 181, dated January 26, 1855.

†† Home Department circular No. 55—1864-73, dated December 27, 1883.

‡‡ Home Department Resolution No. 29—1629-45, dated July 22, 1887.

All the general orders quoted in paragraph § 696A will be found in a pamphlet entitled "Rules and Orders of the Governor-General in Council regulating the conduct of public servants in respect to borrowing money, receipt of complimentary addresses and other matters," 2nd edition, 1891.

§§ Home Department circular No. 11—679-58, dated March 18, 1890.



suffice to quote some remarks from a despatch<sup>6</sup> of the Secretary of State, dated February 11, 1875, written in connection with the Alwar succession case stated at length in paragraphs § 325 to § 329 inclusive. "I must," said Lord Salisbury, "express my disapproval of the precipitation shown by the Acting Political Agent in Alwar in taking an active part in support of one of the candidates for the succession, and that one, the candidate who, though apparently regarded in the State as having the stronger claim, does not in other respects, and apart from that consideration, seem to be in himself the most eligible. It was the duty of Captain ——— to confine himself to taking the necessary steps for maintaining order and carrying on the government pending the settlement of the question, active interference in which, on his part, was likely not only to be misunderstood in the State, but also to embarrass your Government in arriving at an ultimate decision."

§ 698. In accordance with the intention expressed in paragraph § 674, we have not attempted to give an exhaustive account of the duties of Political Officers or to bring together all the orders by which these duties are defined. On the other hand, we have included an incidental topic, that of the remuneration of Medical Officers. Taking only the important orders which we have thought it worth while to notice, we may now enunciate the following propositions as, in all probability, sufficiently established.

- (1) *Political Officers must not guarantee loans to Native States.*
- (2) *As a rule they should not guarantee engagements between a Ruling Chief and his subjects.*
- (3) *Except with the permission of Government, Political Officers may not act as arbitrators in disputes between British subjects and Ruling Chiefs though they may be permitted to nominate an umpire in a case submitted to independent arbitration.*
- (4) *They must not execute commissions for Ruling Chiefs.*
- (5) *As a general rule, they must not use Darbar houses or furniture.*
- (6) *The use of Darbar vehicles and animals by Political Officers is not permitted except in certain specified circumstances.*
- (7) *Political Officers may not borrow money of, or lend money to, any Natives of India resident within their respective political circles.*
- (8) *The acceptance of presents generally is prohibited, but the acceptance of presents of inappreciable value, or of substantial value on behalf of Government as a ceremonial proceeding, is regulated by special rules.*
- (9) *There are special rules also relating to the remuneration of Medical Officers for attendance on Ruling Chiefs and others in Native States.*
- (10) *Political Officers must not hold land in Native States. This prohibition does not extend to land occupied merely by buildings for residence and their appurtenances.*
- (11) *Except with the previous sanction of Government, Political Officers must not ask Ruling Chiefs or officials of Native States for any subscriptions or any one for subscriptions for political objects. Nor may Political Officers use their influence to induce Rulers or Ministers of Native States to subscribe to public or private funds.*
- (12) *Communications made to Ruling Chiefs by order of Government should be reported to Government. As a rule, copies of correspondence with Government should not be supplied to Darbars, but the purport of the orders should be exactly conveyed, usually with the omission of the reasons for them. The same practice may properly be observed in communications with political pensioners.*
- (13) *Political Officers are under the rules of discipline generally applicable to public servants of like rank.*

<sup>6</sup> Pro., Political A, June 1875, No. 182.

**(14) Political Officers must not take sides with parties in Native States.<sup>9</sup>**

§ 699. One of the questions treated in Sir Mortimer Durand's volume of *Escorts of Political Officers in Native States*, 1875 was that of the escorts of Political Officers in Native States. Some later papers<sup>7</sup> have been examined, but there is nothing of any general interest to add to Sir Mortimer Durand's note, which is accordingly reproduced here.

[In November 1869 Colonel Keatinge brought to notice that the escort of the Political Agent at Bhartpur was composed of Bhartpur troops. During the minority of the Maharaja the Political Agent received his pay from the State, and had full command of the resources of the country and its establishments. At that time the escort was suitably composed of State troops. But circumstances had now changed. The troops and establishments were under the direct control of His Highness, and the Political Agent had duties in connection with three other States which would necessitate his moving about in their territories. Colonel Keatinge thought these States would not be pleased at seeing the escort composed of Bhartpur troops, and that the arrangement would be objectionable as giving that State undue weight. He proposed therefore to make the Political Agent independent of State troops, and requested that as Deoli, the nearest station of any Rajputana Irregular Regiment, was fully 200 miles distant from Bhartpur, an escort of Native Cavalry and Infantry might be supplied from Agra, distant only 32 miles.

[In forwarding this proposal for the consideration of the Military Department, it was intimated that His Excellency in Council was not disposed to support it. There appeared to be "no reason why the Bhartpur Darbar should not supply the Agent there with a guard within the limits of the State, their place being taken by a guard from Alwar, Dholpur, and Karauli" when he entered these States. This principle had been followed in the case of Bahawalpur, which was for the future to supply and pay for a picked body of men to escort the Political Agent. The Military Department concurred. It was "undesirable to withdraw detachments of this nature from their head-quarters," and the adoption of the plan followed in Bahawalpur or the supply of an escort by the several States in turn seemed to be more expedient. On receipt of this reply, Colonel Keatinge was informed that his proposal was open to objection and it was suggested that a picked body of men might be raised from the States in question, each State furnishing a certain contribution. Should this course be deemed impracticable, the several States might furnish the escort in turns, or each State might furnish the escort while the Agent was within its borders.

[Colonel Keatinge replied at length. He pointed out the necessity of guarding against anything which could compromise the independence of Political Agents in the eyes of the suitors who approached them. He noticed how often Government Agents had been found to degenerate in a few years into simple advocates of a Native Court, and attributed the fact to the position of those officers living in a Darbar building and surrounded by creatures of the Court. "If," he said, "in addition to these influences the Darbar troops guard the Agency, escort prisoners to and from the Agency Court, and occupy

We add here a list of certain old orders affecting the conduct of Political Officers which it seems undesirable to include in the text, partly because they would add unduly to the length of this Chapter and partly because it is uncertain to what extent some or all of them are still in force:—

1. *Political Officers should mention in their letters to what persons they have sent or are sending copies of them.* Political Consultations, September 20, 1841, Nos. 5-6.

2. *Political Officers may not divulge any portion of their instructions which they are not specially directed to communicate.* Foreign Consultations, May 24, 1843, Nos. 10-16.

3. *Official documents or information must not be published or communicated to individuals without the consent of Government.* Notification, dated August 30, 1843. Foreign Consultations, September 2, 1843, Nos. 58-59.

4. *Officers whose conduct is impugned may appeal to Government but not to the public through the press.* Foreign Consultations, May 25, 1841, Nos. 178-181.

Nos 2, 3 and 4 above are covered now by general orders applicable to all officers of Government. A Home Department Circular of 1884 gave fresh currency to the Notification of August 30, 1843, and to a Foreign Department order of March 15, 1847, which implied the principle stated in No. 4—see Home Department Circular No. 30—1267-70, dated August 16, 1884, and orders and Resolutions of 1843, 1847, 1875, and 1878 annexed thereto.

5. *Political Officers may not take advantage of being in foreign territory to evade pecuniary demands.* Circular No. 1645, dated July 1, 1848. Foreign Consultations, July 1, 1848, No. 11.

It is hoped that this list may be useful if the Government ever decides to issue in a consolidated form the circulars binding on Political Officers which are still in force.

<sup>7</sup> Pro., Political A, August 1879, Nos. 3-8,—Nepal Escort.

Pro., Political A, August 1882, Nos. 110-115,—Baluchistan Escort.

lines at the Residency gates, then the Agent will be surrounded by a physical as well as a mental cordon, and the results will be worse.

["What chance would an Agent so surrounded have of making a journey which the Darbar wished to oppose? He would suddenly find that there was no carriage for his tents, that his guard was unpaid, and would not march and that when he had started them, they could not find the road to their destination.

["What chance would a petitioner have of reaching the Agent if it was known that the Darbar desired his approach to be barred? And what position would he occupy when settling a boundary dispute among lawless Thákurs in opposition to the Darbar whose troops escorted him?"

[In conclusion Colonel Keatinge reiterated his application for a guard of regular troops from Agra. If this were still considered undesirable, he proposed drawing on Deoli for a detachment. Under all circumstances he deprecated, "the project of having Political Agencies guarded by Darbar troops."

[Government decided that if escorts were required, they should be supplied from "the several political corps" under the control of the Agent to the Governor-General both in Rajputana and Central India, and arrangements were made accordingly.

[The subject was again brought up in 1874, when the Political Agent at Dholpur applied for an escort. In forwarding the application, the Agent to the Governor-General recommended the grant of "a moderate escort suitable to the dignity of the Political Agent," and suggested that as the Deoli Force was already fully employed, the escort for Dholpur might be drawn from Agra. The Government of India were of opinion that the objections to an escort being furnished by the Native State hardly applied to the case of a minority when the Political Agent was virtually the Government of the State. It was accordingly intimated to Sir L. Pelly that until the Dholpur Chief came of age, an escort from the State would be sufficient for all purposes.º]

§ 700. Briefly these decisions appear to amount to this:—*The escort of a Political Agent in a Native State should not as a rule consist of State troops. Where*

*an escort is necessary for a Political Agent in Central India or Rajputana, it should ordinarily be furnished by one of the political corps. But an escort of State troops may suffice during a minority when the Political Agent is in charge of the State and has full command of the troops and establishments.º*

§ 701. Having discussed the duties of Political Officers and the rulings relating to their escorts in Native States, we have presently to consider the position of Europeans and others not in political employ when in State territory. By way of transition we may notice certain decisions as to the operation of the Income Tax Act, No. II of 1886, in Native States. Under section I (1) the Act applies, "within the dominions of Princes and States in alliance with Her Majesty, to British subjects in these dominions who are in the service of the Government of India, or of a local authority established in the exercise of the powers of the Governor-General in Council on that behalf." The Act has been applied to the Cantonments of Bangalore, Baroda, Nimach, Nowgong, Mhow, and Deesa,\* in all of which British jurisdiction is exercised. When so applied as a territorial law the Act would affect officials and those who are not officials equally. A Resolution of the Government of India in the Department of Finance, dated August 21, 1886, declared that the salaries of officers serving outside of British India whose services have been lent to, and whose salaries are paid by, Native States, are not liable to the tax levied under the Act.<sup>10</sup> If the services of an officer have been lent to a Native State, and he is employed outside of British India, and his salary is paid partly by the

º Pro., Political A, January 1870, Nos. 17-26.

Pro., Political A, August 1870, Nos. 1-8.

Pro., Political A, September 1874, Nos. 205-207.

\* This summary is in substance identical with the head-note of 1875, but the wording has been slightly altered.

\* Notifications, No. 2155-I., dated June 24, 1886, Nos. 294-I. to 297-I., and No. 300-I., dated January 26, 1887. Pro., Internal A, May 1887, Nos. 38-96.

<sup>10</sup> Pro., Internal B, September 1886, Nos. 12-13. The Financial Resolution is No. 2650, dated August 21, 1886.

Native State and partly by the British Government, the tax is not leviable on the portion paid by the Native State. So also an allowance is exempt if it be paid by a Native State to an officer employed outside of British India on work for that State, even although his services have not been formally transferred to State employ. But these decisions are subject to the important proviso that if the Government of India be legally liable for the salary of the officer concerned and if the officer be serving under the Government of India and in receipt of a salary fixed by them, the mere fact that the salary is actually paid by a Native State will not exempt it from taxation under the Act.<sup>11</sup> Lastly, after very full discussion and in supersession of previous orders, the Government of India ruled on May 11, 1894, that the employés of Railway Companies (not State Railways), who serve, reside and draw their pay in Native States, are exempt from the operation of the Income Tax Act.<sup>12</sup> It is not necessary for the purposes of this Chapter to give an account of the discussions on which these various orders were based.

§ 702. A great deal has already been said which bears on the position of  
 The position of Europeans and Europeans and Americans and of British  
 foreigners in Native States. subjects generally in State territory.  
 Thus we have shown in paragraphs § 78 to § 80 inclusive that the British  
 Government has a right to require from all Native States for all British subjects  
 personal religious freedom and security from molestation within their own houses  
 and on their own property. We have discussed at length in paragraphs § 81  
 to § 94 the whole question of the employment of Europeans and Americans  
 in Native States; and in paragraphs § 95 to § 100 the cognate question of  
 dealings between Native States and capitalists or financial agents. In para-  
 graph § 152 in connection with the orders regarding the arrest and surrender  
 of deserters we have touched on the limited jurisdiction of a Native State  
 over Native officers and soldiers of the British army. On this point we shall  
 have something to add below, and we may notice here how we stand at present  
 in regard to the holding of land and other immoveable property by Europeans  
 and foreigners in Native States.

§ 703. In the first place it is necessary to remark that the position is unde-  
 fined and that it has not been thought expedient to attempt to define it. It will  
 be seen from the summary of treaty provisions in paragraph § 81 that without

Holding of immoveable property by  
 Europeans and foreigners in State terri-  
 tory.

the consent of the British Government,  
 Hyderabad, Travancore, Cochin and  
 Bhartpur may not permit the residence  
 of any European, and Gwalior and

Sikkim of any European or American, in the territories of these States respect-  
 ively. These provisions might prove to have some importance in the present  
 connection, because it might be argued that if the British Government have power  
 to prevent the mere residence of a foreigner or European British subject in a  
 Native State, *a fortiori* they have power to prevent, or at any rate to license,  
 the acquisition by such persons of immoveable property in State territory.  
 This remark, however, is made merely with an eye to possible future contin-  
 gencies and is not founded on any formal decision of the Government of India.<sup>13</sup>  
 On the other hand, there have been communications with Kashmir which show  
 that the British Government will protect British subjects against unfriendly  
 obstruction in matters of trade and the acquisition of immoveable property for  
 purposes of trade or other legitimate purposes in a Native State. In 1884 Mr.  
 Russell, a British merchant in Srinagar, who had been assured by the Officer on  
 Special Duty in Kashmir acting with the sanction of the Government of India,<sup>14</sup>  
 that he and his friends might "count upon the full support and protection of the

Cases of Messrs. Russell and Neve,  
 Kashmir, 1884-86.

Residency in all matters of legitimate  
 trade," complained that he was liable

at any moment to be turned out of the house where his business was conducted,  
 and prayed that he might be permitted by the Kashmir authorities to pur-  
 chase the house and land attached to it, as also another house which he used as

<sup>11</sup> Pro., External B, May 1887, Nos. 19-20.  
 Pro., General B, January 1895, Nos. 108-200.  
<sup>12</sup> Pro., Internal A, July 1894, Nos. 60-66.

<sup>13</sup> See, however, the remark of Lord Lansdowne, dated  
 August 27, 1893, in E. W. of Pro. September 1893, Nos.  
 76-83, in the case of Mr. C. S. Wani, Hyderabad.

<sup>14</sup> Pro., Frontier A, September 1884, Nos. 206-210.

his private residence. Shortly afterwards, in February 1885, Mr. Neve, of the Church Missionary Society, represented that the right of the society to hold house property of any sort in Srinagar was at issue. There was no doubt that in both cases the Darbar in various ways, which need not be detailed, opposed the acquisition of permanent rights by the parties. The Government of India were reluctant to take up the particular questions in dispute till it was certain that no amicable arrangements could be arrived at: but they said to Sir Oliver St. John, the Officer on Special Duty in Kashmir,—“The Government of India cannot allow the Darbar to impose upon British traders and other British residents in Kashmir disabilities to which they are not subject in any friendly State.” This<sup>15</sup> was on March 21, 1885. On May 13, 1885, they discussed the matter more fully.<sup>16</sup> “It is evident,” they wrote, “that the Government of India have a right to insist on His Highness giving to all classes of British subjects those facilities for trade which are extended to Kashmir subjects in British India, and this right is in no way affected by the circumstance that British subjects may have the privilege of a peculiar personal law or jurisdiction in Kashmir. Now among the essential facilities which are conceded to Kashmir subjects trading in British India, is the power of acquiring premises for carrying on their business. The Governor-General in Council therefore expects and requires that the Kashmir Darbar will extend to all British traders in Kashmir a fair measure of liberty and encouragement, and in particular it is necessary that such traders should be allowed to purchase or hire with complete freedom any private buildings which they may want for the purpose of legitimate trade or occupation, or any private land for the erection of such buildings. At the same time the Government of India do not wish to insist upon the grant to European traders of any specified terms with regard to buildings in the possession of the Darbar; and they will leave it to the Maharaja to make such arrangements in this matter as may be fair and proper, in the earnest hope that His Highness will see the wisdom of not forcing upon the Viceroy the necessity of more detailed interference.” At the interview between the Viceroy and the Maharaja on January 14, 1886, the Maharaja protested that to allow Europeans to purchase land in Kashmir would be an innovation likely to lead to very unfortunate results. The Viceroy, Lord Dufferin, replied that “throughout British India, Kashmiri traders were free to purchase lands and houses, and that the British Government had a right to expect similar treatment for its European subjects in Native States. The whole of India, from the Himalayas to Cape Comorin, now formed a part of Her Majesty’s Empire, and it was absurd to suppose that Her Majesty’s European subjects could be subjected to disabilities of this kind in one of the feudatory States of the Empire.” In a *khariṭa* of March 16, 1886, recapitulating the results of the interview, Lord Dufferin wrote,<sup>17</sup>—“It is necessary that British traders in Kashmir territory should be allowed all reasonable facilities: and among such facilities must be included the power to buy or hire suitable buildings for carrying on their business, and to acquire land for the erection of such buildings. Your Highness objects to the decision on the ground that the existence in Kashmir of a large colony of resident Europeans, who would not be subject to the jurisdiction of your Courts, would be sure to involve the State in serious complications. But the colony would be equally resident in Kashmir, and equally free from the jurisdiction of your Courts, whether they lived in houses supplied by Your Highness or in houses belonging to themselves; and however this might be, it is not possible that any Native State in India can be allowed to prevent British subjects from enjoying in any part of the Empire so common and necessary a right.”

§ 704. Later on in the same year the Murree Brewery Company asked whether in consequence of any understanding with the Darbar, they had a right to acquire in Kashmir land which they wanted for hop plantations. The reply was in the negative. The Company further asked whether, in the absence of any such understanding, the Government of India would support them in an application for land which would be used solely for trade purposes. On this point the answer was that the Governor-General in Council would not be dis-

<sup>15</sup> Pro., Secret F, April 1885, Nos. 214-241.

<sup>16</sup> Pro., Secret R, November 1885, Nos. 266-276.

<sup>17</sup> Pro., Secret E, July 1886, Nos. 423-425.

posed to insist upon the sale or lease to the Company of land, the property of the Kashmir State, but that if private owners were willing to sell or lease land, the matter would be taken into consideration.<sup>18</sup>

§ 705. In 1892 a complaint was made by Mr. C. B. Ward, a citizen of the United States and a Missionary of the Methodist Episcopal Church, residing in Hyderabad territory. About 1889 Mr. Ward obtained privately, without

Mr. Ward's case, 1892.

reference to the Hyderabad Government or the Resident, a twenty-three years' lease of a village in that territory from a local landowner or official called a Deshpandia to whom the village had been granted by the Nizam. Mr. Ward repaired a tank and brought land under cultivation. The Nizam's Government ordered the district officials to eject him, but the order was not enforced. The Nizam's Minister in a letter to the Resident said—"There has been no definite notice issued by His Highness's Government practically prohibiting the acquisition by Europeans and foreigners of landed property in His Highness's territory, but this appears to have been an understood and recognised practice." The Resident, Mr. Plowden, in his report observed—"Inasmuch as we do not allow, for reasons of policy, foreign nations to accredit representatives of their own to Native States in India, we are bound to give Mr. Ward the benefit of British protection and of the Resident's good offices to a reasonable extent." Mr. Plowden also drew attention to the question of principle whether any Native State should be permitted by rule or custom to prevent subjects of Her Majesty from acquiring land within its limits.

The Resident was requested to keep himself informed about the case so that Mr. Ward might not be molested or unfairly ousted from his village. Apparently the particular case must have ended well for little more was heard of it.

The question of principle was considered at leisure in the light of the Kashmir case and the various other proceedings, including the treaties with different States, referred to in the preceding paragraphs. No further official orders were issued, but the Resident was informed that the Viceroy, Lord Lansdowne, had decided that it would be better not to issue any general orders but to treat each case of acquisition of land by British subjects in Native States as it arises.<sup>19</sup>

§ 706. Returning now to the question of the residence of Europeans, other than officials, in Native States, we may note the case of Mr. Currie in Bhopal, 1886. Mr. Currie, a Eurasian British subject, had been a telegraph

Residence of Europeans in Native States; Mr. Currie's case, Bhopal, 1886. signaller and was imprisoned for divulging a telegraph message. He was then employed as a guard on the Rajputana-Malwa Railway and was dismissed. In April 1886 he was engaged in Bhopal in trying to obtain money from the Darbar. By the order of an officer who was temporarily carrying on the current duties of the Political Agent, the Bhopal Minister informed Mr. Currie that he must leave Bhopal within 24 hours. Mr. Currie did not leave, and apparently stayed on in Bhopal till August 5, 1886, when he seems to have gone away of his own accord. Meanwhile on the same day the Government of India gave the following instructions to the Agent to the Governor-General in Central India:—"In the opinion of the Government of India a Governor-General's Agent has no authority of his own motion to prohibit the residence of a British subject in the States within his jurisdiction. Further, the Government of India consider that a Political Officer—even where his interposition is requested—cannot properly take an active part in the expulsion from a Native State of a British subject whose presence is objectionable. It is the business of the Darbar to take the necessary steps for this purpose. The duty of the Political Officer is merely to sanction the expulsion, and to see that it is managed without unnecessary violence or scandal. Finally, when a Political Officer has come to the conclusion that the removal of a British subject from a Native State is desirable, he should ordinarily refer to the Government of India before taking final proceedings in the matter. This course is especially necessary when there is any chance of the Darbar being defied and of a controversy arising."

<sup>18</sup> Pro., Secret E, October 1886, Nos. 42-57.

<sup>19</sup> Pro., Internal A, September 1893, Nos. 70-98.  
" " August 1893, Nos. 87-89.

This decision does not appear to be applicable in Kashmir. By Notification No. 85-E. of January 13, 1888, the Government of India prescribed for observance by Europeans, Americans and Australians in Kashmir territory rules which relate chiefly to limits of travel in that territory and to compliance with the customs and regulations of the country. The twelfth and last rule stands thus<sup>20</sup>:—"The Resident in Kashmir is authorised to require any person subject to these rules, who breaks any of them, to leave the territories of His Highness the Maharaja of Jammu and Kashmir. If any such requisition on the part of the Resident is not at once complied with, the matter will be reported by him for the orders of the Governor-General in Council."

It is material to note that these rules received the consent of the Maharaja, so that, if the Resident in accordance with them were to require a European to leave Kashmir, the requisition would be made in the exercise of a power delegated to the Resident by the Governor-General in Council and acquired from the Kashmir Darbar. This point, however, has not been settled by the Government of India and is suggested to reconcile two decisions which might at first sight appear to be at variance with each other. We have elsewhere inferred (*vide* paragraph § 547 above) that the power of expelling European British subjects, vested in the Resident by the rules of 1873, still holds good notwithstanding the reconstruction of British jurisdiction in Kashmir by the notifications of 1891.

§ 707. The deliberate omission of Lord Lansdowne to give any general orders in the case of Mr. Ward makes it doubtful whether there can be said to be as yet any settled practice or policy of the Government of India in the matter of

Summary.

the acquisition of immoveable property by Europeans, Americans and Australians in Native States. But the case of Mr. Ward was one of the acquisition of agricultural land by a citizen of the United States. The Kashmir case of Mr. Russell related to the acquisition of building land and buildings by a British subject. If the case of Mr. Russell and the subsequent general communications with the Maharaja constitute a good precedent, there seems to be sufficient ground for the first of the propositions noted in the following summary:—

(1) *When a British subject resides in a Native State with the knowledge and approval of the British authorities and a private person in that State is prepared to sell or let to him any building or building land for the purposes of any legitimate trade or occupation, the British Government will not permit the Native State to refuse to the British subject the right of purchasing or hiring the property.*

(2) *If it is desirable to remove a British subject from a Native State, the needful steps should be taken by the Darbar and the Political Officer should confine himself to sanctioning the expulsion and seeing that it is managed without unnecessary violence or scandal. He should, however, refer to the Government of India before taking final proceedings in such a matter.*

(3) *This decision is not in all respects applicable to Kashmir, where a special power in certain cases has been conferred on the Resident with the concurrence of the Darbar.*

§ 708. In showing to what extent International Law may be applied<sup>1</sup> in dealing with questions between the Paramount Power and the Subordinate States we mentioned the facts of the Quilon sepoy's case, Travancore, 1884. It will be

The limited jurisdiction of Native States over Native officers and soldiers of the British army in respect of offences committed in State territory.

remembered that the sepoy was charged with having committed culpable homicide within the local limits of the jurisdiction of the Travancore Courts, and the question was by whom he should be tried. It appeared to be clear that a Court-Martial would have jurisdiction to try the offence under Article 171 of the Indian Articles of War (Act V of 1869); and equally clear that neither this Article, nor anything else in the Act, took away any concurrent jurisdiction which the Courts of a Native State might be capable of exercising. Whether the Courts

<sup>20</sup> Pro., External A, February 1888, Nos. 21-25.

<sup>1</sup> See paragraph § 13.

of the Native State ought to exercise their concurrent jurisdiction was a question depending not on any British law, but on political considerations. The exact circumstances under which the offence was believed to have been committed were not known to the Government of India when they gave their decision which was conveyed in a telegram<sup>2</sup> of June 13, 1884. "If Pichimuthu," they telegraphed (Pichimuthu was the sepoy's name), "was with his detachment at the time when the offence was committed, and the circumstances which led to the commission of the offence were connected with the performance of his ordinary duties, such as making requisitions for supplies, he should be tried by Court-Martial. If, on the other hand, he was straggling off by himself, and the offence, or the circumstances leading to it, could not be reasonably connected with the performance of his duties, he should be surrendered to the Darbar for trial. If the ascertained facts leave any doubt as to whether the case falls within the former or the latter alternative, the presumption should be in favour of the former." This decision was given with reference to a State where the Courts are good, and it was subsequently superseded by the ruling, communicated to all chief political authorities, in Hardit Singh's case<sup>3</sup> which we have abstracted in paragraph § 152 when dealing with the power of Native States to arrest, but not forthwith to punish, for desertion Native soldiers of the British army in State territory. The decision in Hardit Singh's case has lately been reaffirmed in connection with a reference from the Resident at Hyderabad asking for orders on the question of jurisdiction in regard to offences committed by Native soldiers of the British army either within Cantonments and Hyderabad Contingent stations or outside the limits of these places in territory directly under the authority of the Nizam. "Owing," said Mr. Plowden, the Resident, "to the want of adequate judicial machinery in the Contingent stations, sepoys belonging to that force" (*i.e.*, the Hyderabad Contingent) "have in the past not infrequently been handed over to the Nizam's Courts to be tried for offences committed within station limits. Local circumstances have, however, within the last two or three years materially changed. Regular tribunals have been established in all Contingent stations, while at the same time, owing to the larger number of officers belonging to Contingent regiments and to the increased accessibility of the places at which they are quartered, the facilities for assembling general Courts-Martial when necessary are now much greater than they were a few years ago. This being so, I think the time has come when we may make it a rule under no circumstances to admit the jurisdiction of the Nizam's Courts over sepoys of the Contingent charged with the commission of non-military offences within stations of the Contingent. That we have the right to reserve jurisdiction in such cases exclusively to ourselves there can, I think, be no possible doubt." The case of an offence committed by one of our sepoys within the local limits of Hyderabad jurisdiction was not so clear. Mr. Plowden explained how he understood the orders governing such a case and added the supposition that the principles of those orders would be equally applicable to all our native soldiers whether they belonged to the Contingent or the regular army. The material part of the reply<sup>4</sup> was that in Hardit Singh's case the Government of India had decided "that *the jurisdiction of Native State Courts over Native officers and soldiers of the British army should be strictly and exclusively limited to the following cases:—*

(i) *When a Native soldier while on leave within a Native State commits an offence which renders him subject to arrest; or*

(ii) *when a Native soldier while on leave within a Native State is arrested for an offence committed by him in that State on some previous occasion: provided that the offence so committed is one of those entered in the schedule to the Extradition Act."*

This reply is in itself a sufficient summary of the present matter.

§ 709. The principle of the decision in the Quilon sepoy's case was practically followed in 1891, when the Maharaja of Bhaunagar appealed against the orders of the Bombay Government in the matter of the exercise of criminal jurisdiction by the Bhaunagar Courts over the

Limited jurisdiction of the Kathiawar States over the Kathiawar Agency Police.

<sup>2</sup> Pro., Internal A, April 1885, Nos. 11-25.

<sup>3</sup> Pro., Internal A, June 1892, Nos. 130-135.

<sup>4</sup> Pro., Internal A, June 1894, Nos. 223-224.



Kathiawar Agency Police. In paragraph § 26 we have already mentioned an incidental decision in this Bhaunagar case to the effect that Native States must not submit joint petitions. The Kathiawar Agency Police took the place of the Gaekwar's Contingent and the jurisdiction over the men of that force—so it was held by the Bombay Government, though the point was disputed—rested with the Political Officers. In 1885 the Bombay Government ruled that as regards criminal jurisdiction, members of the new force should be dealt with for offences by the same Courts which dealt with members of the Gaekwar's Contingent, for which the new Police had been substituted. When Bhaunagar and other States protested against this order and the interpretation put upon it by the local officers, the Bombay Government defended it on the ground, amongst others, that various enactments<sup>5</sup> recognise or have recognised the jurisdiction of the Crown over its servants in Native States. A Bombay Government Resolution of May 13, 1889, also quoted the Government of India Resolution No. 158-J., dated August 8, 1871, which declared in paragraph 11 that "jurisdiction should remain with the Political Agent in all cases in which the accused are servants of the British Government or servants of the Political Agent, or of any officers of Government officially employed within the State, whether the accused be a British subject or not." This passage was considered in the Quilon sepoy's case and it was not treated as an absolutely binding authority, because its effect had been much qualified by the subsequent legislation of 1872 and 1879 and by the rules which had been made and the practice which had been adopted under the Extradition Acts of those years. The Quilon sepoy's case was duly referred to when the appeal of the Thákur of Bhaunagar was before the Government of India. The Bombay Government were "willing to allow the Courts of a Native State, having jurisdiction, to take cognisance of an offence alleged to have been committed by an Agency policeman when on leave, and while he is disconnected from his official duties." To this concession no objection was taken by the Government of India. "But," they said, "for obvious reasons charges brought against men on duty cannot be treated in the same way. Such cases should, no doubt, if they are of any importance, be tried in the Courts established or continued by the authority of the Governor-General in Council;" that is to say, in the Agency Courts over which the Political Officers preside. The Government of India, however, suggested that if the offence alleged were of a trifling character and not connected with the official duties of the accused, it might be advisable for the Agency Courts to leave the State Courts to deal with the offender.

The result is that *members of the Kathiawar Agency Police Force are amenable to State Courts for offences committed while they are on leave or absent from duty in State territory. But in the case of serious offences committed while they are on duty, they must be tried by Agency Courts only; though for petty offences unconnected with their official duties, they may be tried by the State Courts.*

These rules allow State Courts a wider jurisdiction than in the case of Native soldiers of the British army; but it is obvious that different considerations apply to a police force such as that of the Kathiawar Agency.<sup>6</sup>

§ 710. We said in paragraph § 444 that we would notice further in this Chapter the present defect in the criminal law applicable to servants of the British Government in respect of things done in State territory. In 1890 one

*Alien servants of the British Government are to be made liable for offences under the Indian Penal Code committed in State territory.* Natwarrai Mulrai, a Baroda subject, in the service of the Bombay Government as reader to a Superintendent of Survey, was charged under section 161 of the

Indian Penal Code with having taken a bribe in the State of Cambay. He was convicted of this offence by a Magistrate in the Ahmadabad District, but on appeal the conviction was reversed by the Sessions Judge, whose decision was upheld by the Bombay High Court. It is true that section 4 of the Indian Penal Code declares that offences committed by a servant of the Queen within a foreign allied State shall be punishable under the Code, but section

<sup>5</sup> The Indian Penal Code, sec. 4; 24 & 25 Vict., Chap. 67, sec. 28; Act I of 1849, sec. 2, repealed by Act XI of 1872.

<sup>6</sup> Pro. Internal A, July 1891, Nos. 49-53.

188 of the Code of Criminal Procedure omits to give British Courts jurisdiction if the servant of Government happens not to be a subject of the Queen. That section relates to the liability only of *British subjects* for offences committed out of British India. If Natwarrai Mulrai had been a Native Indian subject of Her Majesty, the Ahmadabad Magistrate would have had jurisdiction to try him. As it was, he had none. The Bombay Government brought the matter to the notice of the Government of India, who, after some correspondence, in the course of which it was reported that the case was not an isolated one, agreed that legislation should be undertaken. It has thus been decided to amend section 188 of the Code of Criminal Procedure so as to render all servants of the Crown, whether subjects of Her Majesty or not, punishable by Courts in British India for offences committed outside British India.<sup>7</sup>

---

<sup>7</sup> Pro., Internal A, October 1891, Nos. 196-200.  
" March 1892, Nos. 114-115.

## CHAPTER XXI.

### TREATIES AND AGREEMENTS.

§ 711. In this Chapter we propose to state the rules which have been prescribed by the Government of India for the execution of treaties and agreements with

Introductory.

Native States and to show that ordinarily the sanction of Government must be obtained before negotiations for the conclusion of treaties or agreements are commenced. We shall also touch slightly on the powers of the Governor-General in Council and other authorities to make treaties with States of the internal protectorate. Of late years *sanads* and *kharātas* have frequently been preferred to treaties as the means of placing on record an understanding arrived at between the Paramount Power and a subordinate State. In some cases, usually because the transaction was petty, when there has been such an understanding, a formal agreement between the British Government and the State concerned has not been considered necessary; and the record of the affair has taken the form of an arrangement concluded between the State and some subordinate British authority. Conventions or treaties with petty States are not approved. In several cases it has been considered advisable to exclude India from participation in treaties with Foreign Powers, principally on account of the system of relations which exists between the British Government and its feudatories. The Government of India have occasionally discussed questions bearing on the interpretation of treaties; and it is a well-known principle that a departure may be made from a treaty stipulation by the mutual consent of both parties to the document without any formal or express alteration in the terms of the document itself. All these are points which we are about to illustrate from records later in date than the Mutiny.

§ 712. In 1884 the Bombay Government forwarded two revised agreements Instructions of 1884 relating to the execution of treaties and agreements. signed by the Rajas of Dharampur and Jauhar, of which the object was to bring those States within the extradition convention executed between the British and Portuguese Governments. The agreements were found to be defective in certain particulars, and in returning them for revision, the Governor-General in Council made these remarks<sup>1</sup>:—

“The Government of India attach much importance to the observance of the formalities which have been recognised as applicable to the execution of treaties and formal agreements with Native States. The usual procedure, after the terms of the agreement have been settled by negotiation, is as follows:—The agreement is headed by its title and object, and the names of the contracting parties and their executing agents, if necessary, are recited. Then follow the articles as agreed upon. *Duplicates are engrossed on parchment either by the officer negotiating the treaty, or in the Foreign Office, and after formal signature and execution by the contracting parties, both copies are transmitted for ratification. One copy is then sent back to the Political Agent for delivery to the State, and the other is sent for record among the archives of this office.* The English version can alone be taken as the accepted text, and all agreements must be executed in English. It is also necessary to be precise as to the titles used by the Native Chief which should only be those that are formally recognised by the British Government.”

In acknowledging these instructions the Bombay Government put some

<sup>1</sup> To Bombay, No. 921-L, dated March 13, 1884. Pro. A. Political I, March 1884, Nos. 40-41. The circumstances under which the Dharampur and Jauhar agreements were made are fully explained in paragraph § 756 below.

questions which had been raised by the Bombay Remembrancer of Legal Affairs, and to these the Government of India returned the following reply :—

“ I am directed to acknowledge the receipt of your letter No. 3536, dated the 8th July 1884, requesting to be furnished with instructions on the following points, *viz.* :—

- (1) In what name agreements with Native States should be entered into on behalf of Government.
- (2) Whether or not the honorific titles and prefixes of the contracting parties should be given in the heading of the agreement.
- (3) Whether the term ‘British Government’ may be used in the body of the agreement to imply the ruling power in India.

“In reply I am to state that ‘British Government’ should be used on behalf of Government as a contracting party in agreements with Native States; that the personal as well as the dynastic titles of the Ruler of the Native State should be used, but the treaty should, unless the agreement is intended to be a personal one only, also be so drawn as to bind the heirs and successors of the contracting Chief or Government; lastly, that the term ‘British Government’ may be used in the body of the agreement to imply the ruling power<sup>2</sup> in India.”

§ 713. The passage in italics in paragraph § 742 above was a repetition of old Instructions of 1884 compared with orders communicated to the Agent to the the instructions of 1868. Governor-General, Rajputana, in 1868.

A good many of the Rajputana Extradition Treaties were executed between 1867 and 1869 and some which contained erasures and interlineations were returned for correction. The words reproduced in the instructions of 1884 occur in a letter No. 621, dated June 17, 1868, written on receipt of a duplicate copy of the Extradition Treaty with Jhalawar. There are two small differences in the expressions used. The letter of 1868 refers to ratification “*by the Viceroy and Governor-General*”; and to the Agent to the Governor-General in place of the Political Agent. The omission of the reference to the Viceroy and the substitution of the Political Agent for the Local Government, appear to have been made for the purpose of avoiding the question whether the Governor of a Presidency can ratify a treaty. The point avoided is not perhaps a very important one, for notwithstanding the old statutory provisions<sup>3</sup> of 1793, it is in practice well understood that all treaties or agreements with Native States must be submitted for ratification by the Viceroy or approval and confirmation by the Government of India. Indeed the statute of 1793 requires that even if a treaty be made by the Government of a Presidency or other Local Government in a case of emergency or imminent danger, the treaty shall, if possible, contain a clause subjecting it to the ratification of the Governor-General in Council. The exact terms used to the Agent to the Governor-General, Rajput-

ana, in 1868 were repeated to all chief political authorities, including Local Governments and Administrations, by a circular<sup>4</sup> Nos. 1625-26-P., dated August 7, 1878; and copies of the instructions given in 1884 to the Bombay Government were communicated for guidance to the Punjab Government in 1887 and 1892 in connection with a supplementary agreement relating to the lease of the Chamba Forests,<sup>5</sup> and with a

<sup>3</sup> Foreign Department, to Bombay, No. 3044-I., dated August 11, 1884. Pro. A, Political I, August 1884, Nos. 159-161.

<sup>4</sup> “And be it further enacted, that it shall not be lawful for the Governors and Counsellors of Fort Saint George and Bombay or of any other subordinate settlement respectively to make or issue any order for commencing hostilities or levying war, or to negotiate or conclude any treaty of peace or other treaty with any Indian Prince or State (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the said Governor-General in Council of Fort William aforesaid, or from the said Court of Directors or from the said Secret Committee by the authority of the said Board of Commissioners for the affairs of India;

“And every such treaty shall, if possible, contain a clause for subjecting the same to the ratification or rejection of the Governor-General in Council of Fort William aforesaid and the said Governors and Counsellors and other officers of the said Presidencies of Fort Saint George and Bombay or other settlements respectively are hereby required to pay and yield obedience to all such orders as they shall from time to time respectively receive from the said Governor-General in Council of Fort William concerning the matters aforesaid.” etc., etc.—33, George III., Chap. 52, Sec. 43.

<sup>5</sup> Pro., Political B, August 1878, No. 4.

<sup>6</sup> Pro., Internal A, March 1888, Nos. 649-652.

revised agreement with the Raja of Mandi providing for the collection by the Forest Department of waif timber in the river Beas.<sup>6</sup>

§ 714. In the correspondence of 1867, 1868 and 1869 relating to the Rajputana Extradition Treaties considerable importance appears to have been attached to the documents being duly sealed. In several cases<sup>7</sup> the Agent to the Governor-

Orders relating to the sealing of treaties. General was asked for duplicate copies of treaties "signed and sealed." In June 1868 the Governor-General in Council refused to ratify the Jaipur Extradition Treaty, as it had then been forwarded, because it bore no seal.<sup>8</sup> On receipt of the Bundi Extradition Treaty,<sup>9</sup> the attention of the Agent to the Governor-General was drawn "to the absence of the State seal, which is essential and should always be attached to such documents," and after some further correspondence in connection with this treaty, the Governor-General in Council anticipated<sup>10</sup> that the Chief would make "no objection to affixing his signature *and seal* to the document." In 1871 when the treaty concerning certain territorial exchanges was made with Sindhia, the Officiating Agent to the Governor-General, Central India, omitted to get the seals of the Maharaja and the Dewan affixed and to affix his own. Lord Mayo, the Viceroy, who had affixed his own signature and seal, thought that these omissions must be rectified, and the Foreign Secretary wrote to the Officiating Agent to the Governor-General accordingly.<sup>11</sup> Whether equal stress would now be laid upon the formality of sealing a treaty is not clear. It will be observed that the orders of 1884 addressed to Bombay prescribe signature, but are silent on the subject of sealing.

§ 715. The statements in the orders of 1884 that "*the English version can alone be taken as the accepted text, and all agreements must be executed in English,*" are also in accordance with former rulings. Treaties and agreements must be executed in English, and the English version is the accepted text.

During the course of the Rajputana extradition negotiations the Maharaja Raja of Bundi urged that the purport of the Bundi Extradition Treaty should be noted marginally in Urdu by the side of the English version. The Political Agent, Haraoti, saw no objection and drew up the treaty in the desired form. Upon this the Government of India observed<sup>12</sup> that there was "no objection to the translation of the treaty for the Bundi Chief's information," but that "in accordance with usage, the English version can alone be taken as the accepted text."

§ 716. The same principle was affirmed in 1871 during the negotiations for the territorial exchanges with Sindhia just mentioned in paragraph § 714. We have described the facts of the case in paragraph § 19. It will be remembered that Sindhia relinquished certain ancestral villages in the Deccan, which we ceded to the Nizam, and acquired certain villages of the North-Western Provinces. [The terms of the cession having been settled, a treaty was drafted in English and submitted to the Maharaja for signature by the Political Agent at Gwalior. At this point an unexpected difficulty cropped up. His Highness positively declined to sign the treaty with an English draft only, and claimed that the same procedure should be followed as in the case of the treaty of 1860. That treaty was drafted in English and Urdu. The two versions of the several articles were disposed side by side upon the same sheet in separate columns, and Lord Canning's signature was placed under the English version, while Sindhia subscribed the Urdu.

[General Daly's dexterous solution of the difficulty was reported<sup>13</sup> by himself in the following words:—

["I found the treaty with the Political Agent, the Maharaja having returned it untouched. I sent for the Dewan, and, having heard what he had to say, explained the object of Government in having the treaty in English,

<sup>6</sup> Pra., Internal A, December 1862, No. 154-164.  
<sup>7</sup> Political A, September 1868, No. 212.  
<sup>8</sup> " " September 1868, No. 252.  
<sup>9</sup> " " July 1868, No. 165.  
<sup>10</sup> " " July 1868, No. 168.

<sup>11</sup> Pra., Political A, May 1872, No. 152.  
<sup>12</sup> " " July 1869, No. 155. The order was dated May 26, 1869.  
<sup>13</sup> Pra., Political A, May 1872, No. 152. The report is dated December 7, 1871.

and in language which could admit of no question. The Dewan produced the English and Urdu treaty of 1860, and pointed to the Maharaja's signature beneath the Urdu. I asked him to read what the Maharaja had signed; when he admitted that neither His Highness nor himself understood a letter of Urdu. The absurdity of contending for a version in a language not understood was so palpable that the Dewan said he would go to the Maharaja at once and explain our conversation. The result was that a few hours afterwards the treaty was sent for and signed by His Highness without comment.

["I told the Dewan that if His Highness desired to possess a careful translation in his own language, I would send the treaty to the Mahratta Translator of the Bombay Government for the purpose; and, should a desire be expressed, this can still be done, but the Maharaja, as well as his Dewan, was at last fully aware of the ridiculous position assumed, and sent a message that he would give me no further trouble about it."]

§ 717. In 1874 it was necessary to obtain the consent of the Idar Darbar to the construction of a weir in the river Hathmati and of a canal through Idar limits. An agreement was accordingly obtained from the Idar State, drawn up in vernacular. It was, after revision, signed by the Maharani, and approved and confirmed by the Government of India. The original vernacular document was retained for record in the Foreign Office, and in forwarding to the Government of Bombay a translation of the agreement, the Government of India<sup>14</sup> said—"In future all agreements between the British Government and Native States in India should be executed in English."

§ 718. It may be noted here that in expressing approval of the draft of the treaty for territorial exchanges with Sindhia the Government of India remarked—

Only permanent transactions should be recorded in treaties. "Nor has any notice of the adjustment of past accounts for mesne profits been inserted in the treaty, as the matter will be settled by a cash payment, and it is advisable that only permanent transactions should be recorded in the treaty.

"Nor is there need of any record in the treaty of the value of the compensation for the Cantonment at Morar, or of that of the villages in Hyderabad territory belonging to Maharaja Sindhia, or of the *jagir* of Anai, which is to be made over to the Dewan of Gwalior. It is quite sufficient that His Highness has accepted the transfer of the villages belonging to the British Government in satisfaction of all claims."

§ 719. One very small point connected with the formalities to be observed on executing treaties and agreements was practically settled in 1887. In submitting, for ratification by the Viceroy, an agreement executed by the junior Chiefs of Kurundwar in regard to the excise administration of their State, the Bombay Government explained that the document was submitted in triplicate (instead of in duplicate as the orders of 1884 require), because it was considered desirable that all agreements of the kind should be placed in original amongst the records of the Bombay Secretariat. The Government of India made no objection, and returned one counterpart for use in the records of the Bombay Government, and another for delivery to the Chiefs concerned. The third counterpart was deposited in the Foreign Office.<sup>15</sup>

§ 720. We have mentioned in paragraph § 713 the agreement of 1887 supplementary to the Chamba Forest Lease and the lease made in 1892 by the Raja of Mandi assigning to the British Government the right of catching, collecting and disposing of waif timber on that portion of the River Beas which passes through Mandi territory. These documents were expressed in technical phraseology and drafted throughout in the style used by English lawyers in the preparation of instruments of lease. Both documents had been drawn up or approved by the Punjab Government Advocate, and the Mandi lease of 1892 was a revised edition of a lease of just the same lawyer-like workmanship which had been

<sup>14</sup> Pro., Political B, October 1874, No. 59.

<sup>15</sup> Pro., Internal A, May 1887, Nos. 148-150.

executed in 1884 to give effect to an arrangement sanctioned by the Government of India, but which had not then been submitted to that authority. The Mandi lease began—" *This Indenture* made the first day of February one thousand eight hundred and ninety-two between His Highness Bijai Sen, Raja of Mandi (hereinafter called the lessor), of the one part and the Secretary of State for India in Council (hereafter called the lessee) of the other part: *whereas* the said lessee is desirous of obtaining complete control over the catching, collection and disposal of waif timber on that portion of the River Beas, etc., etc. .... *And whereas* the said lessor has agreed to and accepted the said proposals: *Now this Indenture witnesseth* as follows:"—The terms of the agreement were then set out in the same style. The Government of India did not object to the draft, but remarked that its form was unusual and directed that the agreement should run in the name of the "British Government" rather than in that of the Secretary of State for India in Council. Such a question of mere form may seem slight, but it is in reality not without importance; for assuredly nothing should be done to obscure the fact that treaties and agreements with Ruling Chiefs are acts of State, wholly performed and continued in a sphere of political negotiation and authority, beyond the reach of British Courts either to enforce, to modify, or to interpret.

§ 721. This doctrine appears to be implied in the Banganapalle succession case, 1870. The fortieth section of the Act of Parliament,<sup>16</sup> which in 1858 transferred the Government of India to the Queen, empowered the Secretary of State for India in Council "to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty" under the Act. It was considered that the law so enacted prevented Local Governments and officers in India from entering into and executing certain contracts, and assurances which they had previously been competent to enter into and execute on behalf of the East India Company; and in 1859, another Act of Parliament<sup>17</sup> was passed to remove this difficulty. Power to execute the contracts and assurances was vested in the Governors, Lieutenant-Governors and various other officers, and the mode in which this power might be exercised was defined. Practically the requirement was that the instruments of contract or transfer and the like should "be expressed to be executed on behalf of the Secretary of State in Council, by or by order of" the Local Government. In 1868 Mr. Norton, the Advocate-General, Madras, brought to notice that the title-deeds issued to holders of *inams* in the Madras Presidency were defective, because they purported to be executed by the Inam Commissioner on behalf of the Governor in Council and made no mention of the Secretary of State. Soon afterwards the Madras Government referred to the Advocate-General a draft *sanad* which they proposed to issue for the Banganapalle *jagir*. The Advocate-General, having in view the opinion which he had lately given about the *inam* title-deeds, advised that the Banganapalle *sanad* should run in the name of the Secretary of State. It may be mentioned that Ghulam Ali Khan, Nawab of Banganapalle, had died on October 7, 1863, and that there had been a dispute as to the succession which the Madras Government had decided in favour of Fateh Ali Khan, the nephew of the late Chief. The circumstances of the dispute, however, are not here material. The Madras Government proposed to issue a *sanad* to Fateh Ali Khan similar to the Banganapalle *sanad*<sup>18</sup> of 1849, but with additions to bring it into conformity with the advice given by the Advocate-General. Banganapalle is unquestionably a Native State, and the mere fact that it is sometimes called a *jagir* no more removes it from the category of States than the like designation removes from that category the possessions of the Southern Mahratta Jagirdars. Mr. Aitchison, the Foreign Secretary, noted—"It will be a great misfortune if the name of the Secretary of State is introduced into such *sanads*. If any name is substituted for that of the Local Government or the Viceroy, it ought only to be the name of the Queen. It seems to me that Banganapalle, which is a Native State, stands on a totally different footing from *inams* in our own territory, and that the construction of law which applies to contracts and agreements regarding *inams* (which are real property vested in the Crown) has

<sup>16</sup> 21 & 22 Vic., chap. 106.  
<sup>17</sup> 22 & 23 Vic., chap. 41.

<sup>18</sup> Printed in Aitchison, VIII, pp. 99-100.

no application whatever to a *sanad* of succession to a Native State, which is in all essential respects a treaty, the power to conclude which vests in the Government of India and in the Local Governments with the previous consent of the Government of India. With all deference to Mr. Norton I doubt whether the law which he quotes has any reference to the case. The papers had better perhaps be sent to Mr. Stephen for consideration." Mr. James Fitzjames Stephen, the Law Member of Council, substantially agreed and his opinion, with some additions, was incorporated in the reply<sup>19</sup> made to the Government of Madras. The Government of India rejected the view that the Act of 1859 was intended to apply to such an instrument as the Banganapalle *sanad*. They explained the object with which that statute was passed, namely, to enable the authorities in India to act as agents to the Secretary of State, so as to bind him by their contracts, and they thought that the statute had "legitimately been held to apply to *inams* which concern real property vested in the Crown." But they continued—"The lands of Banganapalle do not come under that description. In the *sanad* of 1849 it was declared that the lands had been conferred upon Husain Ali Khan and his heirs for ever. If, therefore, the property was ever vested in the Company or the Queen (which is a matter admitting of discussion), it has passed from them altogether. The rest of the *sanad* grants quasi-sovereign rights, and imposes as their condition correlative duties. *Such a grant can in no sense be regarded as a sale or conveyance of real property. It is essentially of the nature of a political engagement, the power to conclude which vests in the Government of India. And that the Supreme Government has viewed the grant of the sanad as such an act of State* is evidenced by the issue of Lord Canning's *sanad* of 11th March 1862 guaranteeing any succession to the estate which may be legitimate according to Muhammadan law. For the above reasons His Excellency in Council does not consider that any addition whatever is necessary in the form of the *sanad* of 1849, in accordance with which, therefore, the *sanad* to be now issued in the name of Fateh Ali Khan may be framed."

§ 722. Treaties and agreements with Ruling Chiefs being acts of State, we may next ask what are the treaty-making powers of the Governor-General in Council? Section 67 of the Transfer Act<sup>20</sup> of 1858 declares that all treaties made by the East India Company shall be binding on Her Majesty. The old statutory provisions which conferred powers on the Company in this respect are still in force. They are contained in an Act<sup>1</sup> of George III. passed in 1793, and though well known, may be quoted here. The forty-second section of the Act runs thus:—"For as much as to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of this nation: Be it further enacted that it shall not be lawful for the Governor-General in Council of Fort William aforesaid, without the express command and authority of the said Court of Directors, or of the said Secret Committee by the authority of the said Board of Commissioners for the Affairs of India, in any case (except where hostilities have actually been commenced or preparations actually made for the commencement of hostilities against the British nation in India, or against some of the princes or States dependant thereon, or whose territories the said United Company shall be at such time engaged by any subsisting treaty to defend or guarantee) either to declare war or commence hostilities or enter into any treaty for making war against any of the country princes or States in India or any treaty for guaranteeing the possessions of any country princes or States;

"and that in any such case it shall not be lawful for the said Governor-General and Council to declare war or to commence hostilities or to enter into any treaty for making war against any other prince or State than such as shall be actually committing hostilities or making preparations as aforesaid, or to make such treaty for guaranteeing the possessions of any prince or State, but upon the consideration of such prince or State actually engaging to assist the Company against such hostilities commenced or preparations made as aforesaid;

<sup>19</sup> No. 1029-P., dated June 13, 1870. Pro., Political A, June 1870, Nos. 304-313.

<sup>20</sup> 21 & 22 Vic., chap. 106,  
<sup>1</sup> 33 Geo. III., chap. 52.



“ and in all cases where hostilities shall be commenced or treaty made, the said Governor-General and Council shall, by the most expeditious means they can devise, communicate the same unto the said Court of Directors or to the said Secret Committee, together with a full state of the information and intelligence upon which they shall have commenced such hostilities or made such treaties, and their motives and reasons for the same at large.”

The result is that the Governor-General in Council may not, except in certain specified contingencies, enter into a treaty with an Indian State for the purposes either of making war upon another Indian State or of guaranteeing the possessions of any Indian State. But there does not appear to be any other restriction upon the general power of the Government of India to make treaties and agreements of all other kinds with States of the internal protectorate; and there is abundant evidence of the free exercise of this power from 1793 up to a recent date in Aitchison's Collection of Treaties, Engagements and *Sanads*.

§ 723. As to the powers of Local Governments and Administrations to execute treaties or agreements with Native States, no leading case has been found which would enable us to formulate any precise rule. Apart from the old

Treaty-making powers of Local Governments. statutory provisions cited in a footnote to paragraph § 713, which are practically

a dead letter now that telegraphic communication has been generally established throughout India, it does not appear that local authorities have any independent powers of making treaties or agreements, though they may, of course, act as the agents of the Government of India in executing treaties and agreements of which the policy has been approved. One thing, however, is abundantly clear. It has been laid down expressly or by implication in many cases that before the execution of any proposed agreement with a Native State, the policy and general purport of the agreement should, if possible, be sanctioned by the Government of India. For instance, the Resident, Hyderabad, in 1882 forwarded an agreement which had been concluded for the exchange of mails between the Hyderabad and Imperial Post Offices. The agreement was approved and confirmed by the Government of India, but they pointed out<sup>2</sup> to the Resident that it had not been approved by them before he signed it. “ No doubt,” they said, “ you had every reason to believe that it would be considered unobjectionable; but . . . the Government of India attaches much importance to the principle that no engagements should be entered into by Political Officers with Native States except under instructions from the Government of India in the Foreign Department; and I am to request that this principle may, for the future, be carefully observed with regard to Hyderabad.”

§ 724. Another case which may be cited in the present connection is the

The Shaikh Othman case, Aden, 1882.

Shaikh Othman case, Aden, 1882. It is true that it relates to the procedure of the Resident at Aden in dealing with uncivilised Arab Chiefs; and the considerations which would apply to the circumstances of a Political Officer situated like the Resident at Aden are doubtless not entirely the same as those which would be applicable to the position of a Political Officer conducting relations with a State of the internal protectorate. Still the discussion in the Shaikh Othman case so far bears upon the powers of Political Officers to negotiate treaties and agreements that it may at least be said that Political Officers in the interior of India would be much less likely to be compelled to use their own discretion in cases of very great urgency than a Political Officer having to do with wild tribes in a detached dependency such as Aden.

In 1882 the Resident at Aden had, in no less than three recent instances, anticipated the sanction of the Government of India in concluding agreements with Arab Chiefs. On October 2, 1880, Major Goodfellow, the Acting Resident, concluded an agreement<sup>3</sup> with Amir Ali bin Mokbil of Dthali by which the Amir became a British stipendiary. It seems that this Chief visited Aden at the end of September 1880, and the Resident, without sanction, took the opportunity of getting him to sign the agreement. With regard to this case the Government of India remarked in a letter of January 4, 1881—“ *Political Officers should execute nothing having the effect of an agreement or treaty without previous refer-*

<sup>2</sup> Pro. A, Political I, October 1882, Nos. 80-83. |

<sup>3</sup> Aitchison, XI, pages 104, 175.

ence to, and sanction by, the Government of India." On May 5, 1831, an agreement<sup>4</sup> placing the Subaihi tribe under the control of the Abdalis was formally signed by the Resident and the Abdali Sultan, Chief of Lahej. In September 1830 the Government of India had desired that, before coming to a decision on the Resident's proposals in regard to the subordination of the Subaihi tribe to the Chief of Lahej, certain points should be considered; but the next communication to the Government of India transmitted this formally-signed agreement without the particulars required. The Government of India explained that it was premature thus to complete such an agreement before it was known that its terms were acceptable to them. "The Resident," they said, "is of course aware that the assent of the Governor-General in Council is necessary to render such agreements valid, but this condition may not be so clear to the Arab Chief with whom it is proposed to make the agreement, and therefore, in the event of its being found advisable to alter any of the terms of the agreement, difficulties might arise." They directed that the Resident should be told that no agreement of this nature should be signed by him until it had received the assent of the Governor-General in Council. In the third case, known as the Shaikh Othman case, the villages of Shaikh Othman and Imad were purchased<sup>5</sup> from the Chief of Lahej. The Government of India had desired to see the draft agreement for approval before execution, but the agreement actually executed by the Resident and the Sultan was sent up without intermediate correspondence, and before this agreement reached the Government of India the transfer of Shaikh Othman and Imad had actually taken place. Moreover, in one very important point the treaty was open to exception.

These cases were reviewed at some length by the Government of Bombay and the Government of India.<sup>6</sup> "The Governor-General in Council," said the latter authority, "fully appreciates the difficulty which must exist in the negotiation of treaties and agreements with uncivilised Chiefs, and he is quite prepared to leave to the local authorities such a measure of discretion as may enable them to seize suitable opportunities for the execution of agreements of which the policy has been approved by the Government. But when an agreement has once received the signature of an accredited agent of the Government it is a somewhat serious matter to refuse ratification to it. As His Excellency the Governor in Council remarks, 'a certain moral obligation attaches to the formal execution of an agreement by the Political Agent, and the Government of India would most naturally object to being placed in the position of having to disallow such an agreement on any essential point.' Such a proceeding would, too, be open to the further objection that it would tend to weaken the position of the Political Officer in the eyes of the Chiefs with whom he had to deal, and so impair his influence in future negotiations. Therefore, as a general rule, *Political Officers should not enter upon negotiations without previous reference to Government, and without obtaining sanction both to the policy and to the general scope of such agreements as they may be called upon to arrange for.*" At the end of the letter the request was added—"that, except in cases of very great urgency, measures may be taken to obtain *the sanction of the Government of India* to the policy, and as far as possible to the terms, of any agreement which it is proposed to make before committing the Government in any way."

§ 725. In paragraph § 18 we referred to the agreement of the States of Kutch and Nawanagar to abstain from levying export duty on certain jettisoned goods. Colonel Barton, the Political Agent in Kathiawar, had suggested to the two Darbars that they should come to a mutual agreement in this matter, but, as explained in connection with the political isolation of Native States, the Government of India preferred either rules accepted by the States or separate engagements between each State and the British Government. Adverting to Colonel Barton's report of his proceedings the Government of India observed<sup>7</sup> "that in all cases where Native States enter into agreements it is not only advisable, but necessary, that the previous sanction of Government should be obtained. The proper course for Political Officers in such cases is to ascertain the wishes

<sup>4</sup> *Attachment*, XI, pages 125-126.  
<sup>5</sup> *Attachment*, XI, pages 127-128.

<sup>6</sup> *Proc.*, Political A, February 1832, Nos. 112-115.  
<sup>7</sup> *Proc.*, A Political I, December 1833, Nos. 62-66.

*of Government before making any formal proposal to the Darbars concerned.*" This order was framed after considering an older case in which Kutch was also concerned and which we have already abstracted in paragraph § 17. It was one of extradition arrangements with neighbouring States, and the Government of India ruled<sup>9</sup> that a *Political Agent has no power to enter into engagements or treaties with any Native State without the previous sanction of Government.* Again, in the Ruparail River case, of which an account is given in paragraph § 19, the Government of India requested<sup>9</sup> that their previous sanction might be obtained in all cases involving agreements with Native States, and said— "The proper course for Political Officers in such cases will be to seek the instructions of the Governor-General in Council before making any formal proposals to the Darbars concerned."

§ 726. The last case which need be mentioned in the present connection is that of the additional Postal agreement between the Imperial Postal Department and the Gwalior State. When a copy of this agreement was received in 1888 in the Foreign Department, with a request that it might be engrossed and executed by the Darbar, it was observed that no authority, so far as known in the Foreign Department, had been given to the Postal Department to enter upon the negotiations which had led to the agreement being framed. In forwarding counterparts of the agreement to the Agent to the Governor-General, Central India, the Foreign Department pointed out<sup>10</sup> "that before the negotiations were entered upon, the consent of the Government of India to their initiation should have been obtained."

§ 727. In paragraphs § 16 to § 19 inclusive we have fully explained and illustrated the principle that Native States may not enter into conventions or engagements with one another except with the consent and through the medium of the British Government. In considering the powers of the various Indian authorities and States to negotiate and conclude treaties and agreements it is only necessary to add that the mere fact that a Chief is at the time a minor does not preclude his entering into an agreement with the British Government which will bind his State. One famous illustration of this principle is the Gwalior treaty of January 13, 1844, to which we have referred in paragraph § 422 when explaining the arrangements connected with the Gwalior Council of Regency. That treaty is described<sup>11</sup> in the heading as a "Treaty between the Honourable English East India Company and Maharaja Ali Jah Jyaji Rao Sindhia Bahadur, and his children, heirs and successors." The Maharaja at the time when the treaty was concluded was eight years old. It is unnecessary to multiply illustrations here, but we may mention a Rewa Kantha case of 1891. The Bombay Government reported that the Thákurs of Bhadarwa and Umetha and the petty Chiefs of the Sankheda, Pandu and Dolka Mehwasis in Rewa Kantha had accepted or provisionally executed agreements consenting to the transfer of the management of the excise in their estates to Government for a term of ten years from January 1, 1888, to December 31, 1897. The Commissioner of Customs stated that in the case of Chiefs who were minors the managers and guardians had signed for them, and the Bombay Government forwarded as a sample of the agreements made or about to be made a draft which had been signed on behalf of the minor Thákur of Vajiria by his guardian and his manager. The Government of India sanctioned the execution of the excise agreements by the Thákurs of Bhadarwa and Umetha and the three Mehwasis, and, though the fact that some of the Chiefs were minors was specially brought to notice, took no exception to the execution of these agreements by minor Chiefs.

§ 728. It is now time to sum up the results of this Chapter so far as we have gone. We have already included in the summary given in paragraph § 33 the principles that treaties, conventions and engagements may not be entered upon by Native States with one another, or by Political Officers with Native States, except with the previous consent of the British Government. There is

<sup>9</sup> Pro., Political A, February 1875, Nos. 198-196.  
<sup>9</sup> Pro., Internal A, January 1886, Nos. 125-129.

<sup>10</sup> Pro., Internal A, February 1888, Nos. 129-136.  
<sup>11</sup> Aitchison, IV, page 75.

no doubt as to the duty of Political Officers, but the cases collected are not quite so conclusive in regard to the powers of Local Governments. In the following summary we have applied the principle of the Shaikh Othman case, 1882, to negotiations with Native States; and the actual language used in that case by the Government of India seems to justify that application. At the same time it must be remembered that the ruling was not given with reference to a State of the internal protectorate, though it was given in reply to the Government of a Presidency. But probably there is no real difficulty here; for a Local Government, if in doubt as to its own powers, would refer the question to the Government of India, and could do so, if necessary, by telegraph. With this explanation, the principles which appear to be established by the cases abstracted above in this chapter may be thus stated:—

(1) *Treaties and agreements\* with Native States must be executed according to certain prescribed formalities.*

(2) *Only the English version of a treaty or agreement with a Native State can be taken as the accepted text; and all such treaties and agreements must be executed in English.*

(3) *A treaty or agreement, unless it is intended to be personal to the Chief, should be so drawn as to bind his successors.*

(4) *Treaties and agreements between the British Government and Ruling Chiefs are acts of State.*

(5) *The Governor-General in Council has power to make treaties and agreements with Native States subject to certain restrictions imposed by a Statute of 1793.*

(6) *Except in cases of very great urgency, the sanction of the Government of India should be obtained to the policy, and, as far as possible, to the terms, of any agreement which it is proposed to make with a Native State, before the Government is in any way committed.*

(7) *A Political Officer not only has no power, as previously stated, to enter upon a treaty or agreement with a Native State, but he should further ascertain the wishes of Government before making any formal proposals for a treaty or agreement to the Darbar concerned.*

(8) *The fact that a Chief is a minor does not preclude him from making a treaty or agreement with the British Government.*

§ 729. In connection with the formalities prescribed for the execution of agreements with Native States we have to note a distinction between ratification

No engagements except treaties are ratified by the Viceroy.

by the Viceroy and approval and confirmation by the Government of India. In 1870 the Government of India engaged to construct a railway from some point on the Great Indian Peninsula line to Indore, and the Maharaja Holkar simultaneously made to the Government of India a loan of a crore of rupees at 4½

Railway Agreement with Holkar, 1870. per cent. for this purpose. The trans-

action was recorded in a written agreement<sup>12</sup> signed by the Maharaja and the Officiating Agent to the Governor-General and dated April 28, 1870. On July 7, 1870, the Maharaja preferred a written request that the agreement should be signed by the Viceroy. The reply of the Government of India was that as the agreement partook "more of a commercial than a political character, it will be quite out of keeping with usual practice to ratify it formally under the signature of His Excellency." The Agent to the Governor-General was asked to explain to the Maharaja "in as kindly and considerate a manner as possible that *ratification is a form reserved exclusively for political engagements recorded in the form of a treaty.*"<sup>13</sup> But, it was added,<sup>14</sup> if His Highness so desired, the engagement would "be en faced as approved and confirmed by Government and signed by the Secretary by order of His Excellency in Council." The document was completed accordingly on August 10, 1870.

§ 730. When the Patiala Postal Convention<sup>14</sup> was ready for execution it was, by oversight, ratified by the Viceroy on October 3, 1884. But a few days later the

<sup>12</sup> Aitchison, IV, pages 180-181.

<sup>13</sup> Pro., General A, August 1870, Nos. 9-11.

<sup>14</sup> Aitchison, IX, page 91.

\* As to understandings with Native States which are not recorded as formal agreements, see paragraph § 730 below and foot-note.

Punjab Secretary was informed of this accident and was addressed demi-officially in these terms<sup>15</sup>: "In future it will suffice that similar conventions or agreements should, after sanction by the Government of India, be signed and executed by a suitable representative of the Native State and the head of the department concerned, and then transmitted to this Department to be endorsed with the following enfacement: 'Approved and confirmed by the Government of India' under the signature of the Secretary in the Foreign Department. This procedure will be observed in the cases of the Jind and Nabha Conventions recently received from your office, unless His Honour the Lieutenant-Governor thinks it desirable that they should follow the Patiala model." The Lieutenant-Governor agreed that the signature of the Secretary would suffice. The Jind and Nabha Postal Conventions were executed in this manner.<sup>16</sup>

§ 731. The adoption, however, of this procedure led to difficulty with the Maharaja Sindhia. A Postal Convention with the Gwalior State was executed

The Gwalior Postal Convention, 1885. on April 28, 1885, in the same way as the Jind and Nabha Conventions were executed.

The Maharaja was dissatisfied, because it did not bear the signature of the Viceroy. The Agent to the Governor-General explained to him that the convention, as the heading declared, was made between the Imperial Post Office of British India and the Post Offices in the territories of the Maharaja, was signed with full authority by the Director-General of Post Offices, and was only approved and confirmed by the Government of India. It was not of the nature of a political engagement. The Maharaja dissented from this view and complained with considerable irritation that he, a Ruling Chief, was, by the procedure adopted, placed on the same footing as the Director-General of Post Offices. He considered that his dignity thereby suffered, and wrote to say that "the custom hitherto has been for all treaties and engagements to be signed by His Excellency the Viceroy and Governor-General, and as regards documents of this nature which do not bear this attestation, it has always been the custom for His Excellency in Council to address a *kharita* to His Highness the Maharaja on the subject confirming the arrangement." Sindhia accordingly requested that such a *kharita* might be sent to him. The Government of India in reply repeated the ruling of 1870 that it would not be in accordance with usual practice for the Viceroy to ratify an agreement of the nature of the Postal Convention and that formal ratification by the Viceroy is reserved exclusively for political engagements recorded in the form of a treaty. As to the request for a *kharita*, the Government of India said—"If a *kharita*

An agreement approved and confirmed by the Government of India, is complete and binding without a *kharita* from the Viceroy.

under the Viceroy's signature could be sent to His Highness without establishing a precedent for the future, His Excellency might be willing to meet the Maharaja's wishes in this respect, for Lord Dufferin is sensible of the good will and sound judgment shown by His Highness in withdrawing his objections to the consummation of the agreement which he had accepted. But it is clear that the transmission of a *kharita* is claimed rather as a right than as a favour, and under these circumstances, unless you are very strongly of opinion that after explanation the concession might be safely and advantageously made in the present instance, without risk of misunderstanding for the future, His Excellency can only request you to inform His Highness that there is no necessity for such a confirmation of the agreement, which, as it stands, is complete and binding." In the end a *kharita* was sent which did not confirm anything but which merely congratulated the Maharaja upon the readiness with which he had accepted and given effect to a convention likely to benefit his subjects and himself.<sup>17</sup>

§ 732. Except in the particular of ratification by the Viceroy, it is generally

In the case of conventions or similar engagements not ratified by the Viceroy, the usual formalities should be observed.

necessary that agreements between the British Government and Native States should be executed with the formalities prescribed in the case of treaties. The

<sup>15</sup> Demi-official dated October 14, 1884, K.-W. of Pro., Internal A, July 1885, Nos. 167-183.

<sup>16</sup> There is a mistake at page 91 of Aitchison, IX, where these conventions are said to have been ratified by the Viceroy.

<sup>17</sup> Pro., Internal A, September 1885, Nos. 8-16, and October 1885, Nos. 181-183.

Gwalior, Patiala, Jind, and Nabha Postal conventions are all headed as conventions between the Imperial Post Office and the Post Offices of the States concerned; but in all those cases duplicate copies were executed in the usual way, one for the State and one for retention in the Foreign Office. If Postal Conventions are so executed, at least equal formalities should be observed in agreements on the face of them described as made not between any subordinate authorities with the approval and confirmation of the Government of India, but between the British Government itself and the State concerned. The

The Kutch and Nawanagar case, 1884. leading case on this point is, however, the Kutch and Nawanagar case to which we have already several times referred. When the case had practically reached its conclusion the Bombay Government sent up from each State an agreement, *mutatis mutandis*, in these terms:—

“His Highness Jam Shri Vibhaji, K.C.S.I., Jam of Nawanagar, hereby agrees that he will not in future levy any export duties on goods which may be washed ashore within his territory, being portion of a cargo thrown overboard from sailing vessels sailing from or belonging to ports under the jurisdiction of His Highness the Rao of Kutch.

“This agreement is supplementary to that passed by His Highness the Jam on 28th June 1873.”

The agreement of 1873 was that customs duties should not be taken from Nawanagar vessels driven into Kutch ports by stress of weather.<sup>18</sup> The Bombay Government in forwarding these documents said it was understood that the rules regarding execution of agreements with Native States communicated<sup>19</sup> to them in March 1884 were not intended to apply to such minor conventions as these. But the answer was—“The Government of India attach considerable importance to the execution of every formal agreement with a Native State in accordance with the rules referred to. In the present instance, they would have preferred the execution of an agreement which commenced by reciting the previous engagement, and then proceeded to bind the Native State to the British Government not to levy duties on goods jettisoned from vessels belonging to other Native States. The responsible authority in each Native State, as well as the Political Officer representing Government, would both have been parties to the contract, and the instrument would have been executed in accordance with the prescribed formalities. In consideration, however, of the fact that practical inconvenience might result from the substitution of revised agreements for those now sent . . . the Government of India will not press their objections in the present instance.” Accordingly the engagements were sanctioned, but a request was made that in future effect might be given to the general instructions.<sup>20</sup>

It may be noted that the Patiala, Jind, and Nabha Postal Conventions were not sealed.<sup>1</sup>

§ 733. While it is a general rule that a formal agreement with a Native

In many understandings with Native States it is expedient to avoid conventions and similar formal agreements.

State should be executed with the usual formalities, there are many cases in which, although there may be an understanding for some specific purpose with a Native State, it is desirable to avoid recording it in any document of the nature of a convention. We have seen that in the case of the Faridkot Postal Convention the Government of India stated that there were objections to entering into Postal Conventions with very small States<sup>2</sup>; and in connection with telegraph extensions in Native States on guarantee we have mentioned certain advantages which a guarantee possesses over a telegraph agreement of the usual type.<sup>3</sup> In April 1890 the Bombay Government forwarded “for ratification by the Government of India” an agreement between the Political Agent, Kathiawar, “under the authority of the Viceroy and Governor-General of India in Council” and the Thákur of Rajkot relating to the water-supply of the Rajkot station. Land was taken

The Rajkot Tank case, 1890.

up for the construction of a tank, and water-pipes from it were to be laid within

<sup>18</sup> Aitchison, VII, page 83.

<sup>19</sup> See paragraph § 712 above.

<sup>20</sup> Pro. A, Political I, August 1884, Nos. 165-168.

<sup>1</sup> K.-W. of Pro., Internal A, July 1885, Nos. 167-183 page 6.

<sup>2</sup> Paragraph § 163, *supra*.

<sup>3</sup> Paragraph § 180, *supra*.

the limit of the Rajkot State; and in consideration of these and other subsidiary conveniences the Kathiawar Agency was to pay to the Rajkot State an annual rental of five hundred rupees. The Government of India had previously<sup>4</sup> intimated that they had no objection to the draft of this agreement; but when the document was received "for ratification" they considered that this previous order had done more than was necessary and should have been limited to approval of the proposal that the land should be leased. After further consultation with the Bombay Government the Government of India returned the agreement in triplicate without ratification and said—"In one important respect the agreement as now drawn is defective, since the late Thákur Sahib undertook to observe its conditions on behalf of himself only and not of his successors. Strictly speaking, therefore, its validity has terminated with that Chief's death, and the arrangement should be renewed with the present Thákur Sahib. *It does not, however, appear to the Government of India that the matter is of sufficient importance to call for the execution of any formal instrument between the State and the Government of India.*" It was therefore suggested that "the terms of the undertaking might conveniently be embodied in an agreement between the Darbar and the Kathiawar Agency, to be approved by the Government of Bombay with the prior assent of the Government of India." This course was practically adopted<sup>5</sup>; but the agreement as finally approved by the Bombay Government ran in the name of the Political Agent, Kathiawar, "on behalf of the British Government."

§ 734. The Surgana case of 1893 is also in point. In August 1893 the Bombay Government forwarded, for confirmation, an Abkari agreement in

The Surgana case, 1893.

Mahratti executed by the Deshmukh of Surgana on February 14, 1889. A proposal that the Deshmukh should lease his abkari revenue to the British Government had fallen through, and the agreement provided for the assimilation of the system of abkari and the rates of taxation on liquor in Surgana with the system and rates in force in the neighbouring British districts. It was not considered convenient to ask the Deshmukh to sign an English version of the agreement, and it was feared that he might demur to sign a new one. The Government of India replied<sup>6</sup> that in view of the fact that the agreement in question was entered into for a period of only ten years, and that nearly half of that term had already expired, any formal ratification of it in 1893 would be inappropriate; but they had no objection to its provisions being followed, as before, during the remainder of the period of its operation. They further observed that "in the opinion of the Governor-General in Council there are objections to entering into formal conventions with small Native States in matters of this kind," and requested "that, when the present agreement is about to expire, the Bombay Government may consider whether all requirements cannot be met by a set of rules to be drawn up by the Bombay Government with the approval of the Government of India and accepted in writing by the Chief."

§ 735. Shortly afterwards, in April 1894, the Bombay Government forwarded an agreement in triplicate with the Raja of Akalkot, whereby he leased to the British Government the abkari revenue of his State for ten years. In accordance with the request of the Bombay Government the agreement was ap-

The Akalkot case, 1894.

proved and confirmed by the Government of India. Two counterparts were returned for record in the Bombay Secretariat and delivery to the Raja respectively. The third was retained in the Foreign Office. Inviting attention to the instructions cited in the preceding paragraph, the Government of India inquired whether there was any special reason for not following in the case of the Akalkot State the course suggested in the case of Surgana. The Bombay Government replied on July 4, 1894, in these terms:—"Although the number of States in this Presidency is very large, and most of them are very petty, yet they are as tenacious of their privileges as the largest States. The Governor in Council has excluded from the category of 'small Native States' as used in your letter No. 3810-I., States which have been honoured with a *sanad* of adoption, and which include an area of 500 square miles under a Chief with

<sup>4</sup> Pro., Internal B, January 1890, Nos. 335-337.  
" " June 1891, Nos. 198-200.

<sup>5</sup> Pro., Internal A, September 1890, Nos. 10-12.  
" " June 1894, Nos. 479-481.

the large powers exercised by the Raja of Akalkot. In the Agencies of the Mahi Kantha and Palanpur recourse is being had to rules as far as possible, but a strong disinclination to the change of practice suggested by the Government of India has even there manifested itself. The Governor in Council therefore considers that it would frustrate the object aimed at if the resistance of a State so large as Akalkot were provoked just at present." This letter was simply recorded without orders.<sup>7</sup>

§ 736. It will be convenient to summarise here what has been written since

Summary.

our last summary was framed. In the remarks about to follow we refer to treaties and other engagements between the British Government and the Native States; and under the expression "formal agreement" we include conventions, so far as they are still in use, memoranda of agreement, and generally any document framed on the analogy of a convention for the purpose of recording an engagement between a subordinate State and the Paramount Power.<sup>8</sup> With *sanads* and *kharitas* as the means of recording engagements we are about to deal below; and agreements with small States and on small matters need not always or often be "formal agreements" in the sense in which we use the expression in this place. Understood in this way, our summary may stand thus:—

(1) *Treaties are ratified by the Viceroy; but formal agreements are merely approved and confirmed by the Government of India under the signature of the Foreign Secretary.*

(2) *A formal agreement when so approved and confirmed is binding without any kharita from the Viceroy.*

(3) *Except in the particular of ratification by the Viceroy, formal agreements, when required, should be executed in accordance with the rules prescribed for the execution of treaties.*

(4) *But in the case of small States or of petty transactions with a State, formal agreements are often unnecessary and it is usually expedient to avoid them.*

§ 737. As we have just implied, when a formal engagement between the Para-

Present preference for *sanads* and *kharitas* in recording engagements with Native States.

mount Power and a subordinate State is necessary; it may be put in writing otherwise than by means of a treaty, a convention, or an agreement of the type of a convention. For the record of these engagements there is an increasing tendency to prefer *sanads* and *kharitas* to documents of other kinds. We will illustrate this remark somewhat fully, and we will take first the Periyar jurisdiction case of 1891. We mentioned in paragraph § 257 that the Travancore Darbar leased to the British Government the land required in connection with the Periyar Canal Project. In 1891 the Madras Government forwarded the draft of a convention for a partial and temporary cession of the jurisdiction of the Travancore State over the sites

The Periyar jurisdiction case, 1891.

occupied by the Periyar Project Camps. The Government of India observed that " 'convention' is not the term now ordinarily applied to agreements concluded between the Paramount Power and subordinate States. 'Memorandum of agreement' is the style usually adopted when a cession takes the form of an agreement; but a letter from the Chief of the Travancore State would constitute a sufficiently valid cession. *It is to be remembered that we are not making a treaty between equal powers, but an arrangement between the Paramount Power and a subordinate State, and it is well in such cases to avoid as far as possible the forms of international treaties.*" A draft memorandum of agreement was prepared, of which the first five paragraphs gave effect to the partial cession of jurisdiction required; and the sixth and last paragraph recorded the undertaking of the British Government "to make over to the Travancore State persons escaping from the custody of the State and found within the areas" of the camps "and also to make over without the formality of an application for extradition persons found within the areas aforesaid who

<sup>7</sup> Pro., Internal A, July 1894, No. 439.

<sup>8</sup> The reason for using the term "formal agreement" here and the term "agreement" simply in paragraph § 728 is that the occasion for distinguishing between agreements

of the nature of conventions and agreements which do not equally require formal execution arises from what is stated in paragraphs § 733, § 734 and § 735.



are accused of committing criminal offences within the limits of the State but outside the areas to which this cession extends." In forwarding this draft for the consideration of the Madras Government, the Government of India explained that for their purposes it would suffice if the Travancore Dewan were to send to the Resident a letter to the effect of the first five clauses of the draft, and if the Resident, having the authority in this behalf of the Government of India, were to reply accepting the terms of the cession and undertaking to do what was specified in the sixth and last clause. At the same time if the Madras Government preferred to execute an agreement and saw no objection to the terms of the draft, an agreement might be executed accordingly by the Travancore Resident on behalf of the Governor General in Council and by the Travancore Dewan on behalf of the State.<sup>9</sup>

§ 738. The Periyar Jurisdiction case of 1891 indicates the principle on which

Reasons for the form of the Mysore instrument of transfer, 1881.

is grounded the now usual avoidance of the forms of international treaties in engagements with Indian States. A very leading case in which the Government of India preferred an instrument of the nature of a *sanad* to a treaty is that of the Mysore rendition already to some extent discussed at paragraphs § 276 to § 279 in the chapter on the preservation of Native Rule. The last clause of the instrument of transfer<sup>10</sup> declares with reference to the Mysore territories that—"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." Ordinarily as between equal powers old treaties would be superseded only by a new treaty; but the supersession of treaties by an instrument which did not take the form of a treaty is of itself evidence of a deliberate rejection of that form. In the despatch of 1867 which directed the rendition, the Secretary of State said that it was obviously necessary that the terms of the subsidiary treaty of 1799 should be revised, and instructed the Government of India to enter at the proper time into a "distinct agreement" with the Maharaja as to the principles upon which he should administer the country and "to enter into an arrangement with him for the purpose of adequately providing for the maintenance of a system of government well adapted to the wants and interests of his people." In 1873 the Secretary of State called attention to the circumstance that the young Maharaja was approaching his majority, and in 1874 Mr. Aitchison, the Foreign Secretary, prepared the first rough draft of the *sanad* or instrument. "It is necessary," said Mr. Aitchison<sup>11</sup> on that occasion, "first to settle the form in which the conditions are to be recorded. The Secretary of State seems to contemplate a treaty modifying that of 1799. To this I think there are many objections. Circumstances have so altered now as to make treaties between the Paramount Power and protected and dependent States an inconvenient mode of recording mutual obligations. In the present case it is open to the objection that the Maharaja's consent would be necessary. If he were to object to any of the conditions, we should be involved in long and delicate negotiations in which the Maharaja would probably be backed up in extravagant demands by many bad advisers. He is in reality the recipient of favours—the person who benefits by the avowedly liberal policy of Government—and it seems to me to be in every way more becoming that the Government should attach its own conditions to its gift, and that these should be set forth in a *sanad* or patent to be granted by Government to the Maharaja." In 1879 Mr. A. C. Lyall, the Foreign Secretary, preferred a *sanad* to a treaty for the reasons given by Sir Charles Aitchison in 1874, and Mr. Lyall noted that a treaty "implies equality between the contracting parties." On this the Viceroy, Lord Lytton, remarked:—"Before discussing the conditions of transfer, we should settle the character of the instrument in which they are to be embodied. The first question, therefore, is whether the instrument of transfer should be a treaty or a *sanad*. Mr. Lyall says that 'a treaty implies equality between the contracting parties.' This statement, however, requires qualification. A treaty does not imply equality of power between the contracting parties; but it certainly does imply the possession of sovereignty by each of them, for the

<sup>9</sup> Pro., Internal A, November 1891, Nos. 57-60.  
<sup>10</sup> See Vol. II, Appendix B.

<sup>11</sup> K.-W. of Pro., Political A, July 1879, No. 127.

treaty-making power is a function of sovereignty; and sovereign States are *pares inter se* . . . . A *sanad*, however, implies, on the part of the power which grants it, that suzerainty over its recipient which is exercised by the British Government over the Mysore State; and, for this reason, I agree with Mr. Lyall in the opinion that the most appropriate form for the instrument of transfer is that of a *sanad*. The point should, however, as he suggests, be considered in the Legislative Department." After much discussion the neutral expression "instrument of transfer" was adopted, because Mr. James Gordon, the Mysore Resident, and Mr. A. C. Lyall were agreed that the term *sanad* implies, amongst Chiefs, a somewhat inferior tenure.<sup>12</sup> The Secretary of State, in a despatch<sup>13</sup> of August 12, 1880, observed—"Taking all the facts of the case into consideration, Her Majesty's Government consider in the first place that the form in which the instrument is drafted is a correct one. The Maharaja being entrusted with the administration of Mysore solely by the free grace and favour of the British Government and because it is held to be according to good policy to maintain the State under a Native Ruler, it is every way convenient that the relations of His Highness towards the Paramount Power should be defined by a written instrument of the nature of a *sanad* rather than of a treaty, showing clearly the origin of his authority, avoiding unnecessary reference to obsolete engagements of a former period, and embodying all that is requisite for the avoidance of future dispute or misapprehension."

The principle which we may deduce from this discussion and these orders is that *when an engagement between the Paramount Power and a subordinate State consists of a grant of any kind proceeding from the grace and favour of the British Government, a sanad or a document of the nature of a sanad is usually an appropriate form in which the engagement may be recorded.*

§ 739. We said in paragraph § 437 that we should again notice the Sawantwari *sanad* in the Chapter on treaties and agreements. That *sanad* affords an illustration of the principle just mentioned, because it was intended to give effect to the regrant of the State sanctioned in 1861. In a letter<sup>14</sup> of April 9, 1884, the Government of India expressed concurrence in the opinion of the Bombay Government that the circumstances of the case were peculiar, because not only had the British Government to determine the details of a re-grant of a Chiefship, which at one time was forfeited for treasonable conduct on the part of the heir-apparent, but also two generations of people whose interests were concerned had grown up "in the security of a just and civilised administration following on hopeless anarchy and disorder." The Governor-General in Council suggested that a broad distinction should be drawn between those obligations which would be binding on the present Chief, as a consequence of his personal qualities, and those which would be binding on his successors. "It would," His Excellency in Council said, "be more in accordance with the policy of the Government of India to avoid embodying either of these sets of conditions in an agreement between the British Government and the Chief. Conditions of the first class are more suitably communicated to a Native Ruler in a letter from the Chief Political authority with whom he has relations, while it is thought desirable to record conditions of the second class in a formal *sanad* granted by His Excellency the Viceroy and Governor-General to the Chief." Some of the conditions proposed by the Bombay Government in a draft agreement might, it was supposed, become inappropriate when applied to the successors of the Chief. At the same time those conditions did not "contain a comprehensive settlement of various matters of political importance for the settlement of which the re-grant of the Chiefship" afforded a good opportunity. To illustrate these remarks a copy of the Mysore instrument of transfer was forwarded, and it was said—"This document lays down conditions many of which may be wholly unsuitable to the case of Sawantwari, and it is not intended that they should be exactly followed. But the Government of Bombay" would "no doubt be able to draw up in somewhat the same form a document prescribing conditions suitable to the case." Eventually a *sanad* was sanctioned which embodied the conditions intended to be binding permanently upon the

<sup>12</sup> K. Wa. of Pro., Political A., September 1879, Nos. 357-358; and March 1880, Nos. 117-118.

<sup>13</sup> Pro. A., Political, October 1880, Nos. 164-165.  
<sup>14</sup> Pro. A., Political, I., April 1884, Nos. 133-157 A.

Chiefs of Sawantwari. The Bombay Government proposed to leave any further conditions, which should be binding on the present Chief "as a consequence of his personal qualities," to be determined when he was about to be given a trial as a Ruler. But as his installation has been indefinitely postponed, no further conditions have been suggested.<sup>15</sup>

§ 740. Another well-known instance in which the re-grant of a State was made by *sanad* is that of Manipur. A transcript of the *sanad*, dated September 18, 1891, is given in paragraph § 287 above. It would be easy to multiply instances in which *sanads* have been used either to make original grants of territory or to confirm Chiefs in their territorial possessions or to enlarge their powers or to confer honours or rewards upon them. Thus the engagements with the States of Bundelkhand, which declare generally that the territory had been annexed to the British dominions, but that the States of the Chiefs were continued or granted to them from motives of justice, benevolence and good faith, were made in the form of *sanads*,<sup>16</sup> acknowledging *ikrarnamas* or deeds of allegiance on the part of the Chiefs. The re-grants of Chhatarpur<sup>17</sup> in 1854 and Ajaigarh<sup>18</sup> in 1859 were made by *sanads*; and the Ajaigarh *sanad* then issued also conferred upon the Chief the title of Raja Bahadur. *Sanads* conferring full criminal jurisdiction were granted to the Chief of Panna<sup>19</sup> in 1867 and again to his successor in 1887, also to the Chiefs of Baoni and Ajaigarh.<sup>20</sup> The title<sup>1</sup> of "Mahendar" was conferred on the Panna Chief by *sanad* in 1869. *Sanads* of 1860 empowered the Chiefs of Patiala, Jind and Nabha to inflict capital punishment without reference to any British authority; and when additional territories were given to these Chiefs after the Mutiny, the grants were recorded in the *sanad* form.<sup>2</sup> Certain estates in Oudh were granted to the Kapurthala Chief<sup>3</sup> by *sanad* in 1859 in reward for his services in the Mutiny. Territorial grants in recognition of Mutiny services were made in 1860 by *sanads* to the Nawab of Rampur,<sup>4</sup> and the Begam of Bhopal,<sup>5</sup> and in 1861 to the Maharaja of Bikanir.<sup>6</sup> The Raja of Khetri acquired the *pargana* of Kot Putli by *sanads* from Lord Lake and the British Government given in 1803 and 1806 respectively.<sup>7</sup> The Chiefs of Pataudi, Loharu and Dujana hold under *sanads* of the British Government confirming grants made by Lord Lake. As in the case of the Bundelkhand *sanad* States, so in the cases of the Punjab Hill Chiefs<sup>8</sup> after the Nepal war of 1814-15, and of the Chamba, Mandi and Suket Chiefs<sup>9</sup> and of part of the Chiefship of Bilaspur after the first Sikh War, the engagements restoring or continuing the Chiefships in territories which had come into the possession of the British Government were expressed by means of *sanads*. Nalagarh<sup>10</sup> was re-granted by *sanad* in 1860 and Baghat<sup>11</sup> by similar documents of 1862 and 1864. The Kiarda Dun<sup>12</sup> was conferred upon the Raja of Nahan by *sanad* in 1833. A part of the hereditary possessions of the Garhwal Rajas was restored to the Garhwal Chief after the expulsion of the Gurkhas, and the State so formed having lapsed was re-granted in 1859. *Sanads* were given on both occasions,<sup>13</sup> and the *sanad* of 1859 bestowed on the Chief the title of Raja. The *pargana* of Phulia<sup>14</sup> was continued to the Chief of Shahpura by *sanad* in 1848. A *sanad* of 1826 conferring the so-called *jagir* of Sandur<sup>15</sup> upon the Chief of that State was renewed by *sanads* of 1841 and 1863. A *sanad* of 1849 confirmed to Ghulam Ali Khan the State (also called a *jagir*) of Banganapalle.<sup>16</sup> In 1866 the title of Maharaja was bestowed upon the Chief of Travancore,<sup>17</sup> and in 1874 the title of Raja upon the Chiefs of the Tributary Mahals of Orissa<sup>18</sup> and of Nawab upon the Chief of Loharu<sup>19</sup>—all by *sanad*. The most famous instance, however, of the grant of a valued concession by *sanads* is afforded by the distribution of

<sup>15</sup> Pro., Internal A. March 1885, Nos. 204-218; and February 1886, Nos. 85-89

<sup>16</sup> Aitchison, V, p. 16.

<sup>17</sup> " " p. 189.

<sup>18</sup> " " pp. 158-159.

<sup>19</sup> " " p. 120.

<sup>20</sup> " " p. 122.

<sup>1</sup> " " p. 121.

<sup>2</sup> " IX, pp. 73, 76, 93, 96, 102, 104.

<sup>3</sup> " " p. 169.

<sup>4</sup> " II, pp. 20, 21.

<sup>5</sup> " IV p. 235.

<sup>6</sup> " III, p. 307.

<sup>7</sup> Aitchison, III, pp. 117, 118.

<sup>8</sup> " IX, pp. 111-160, *passim*.

<sup>9</sup> " " pp. 125, 130, 164-168, 170-172, 184-185.

<sup>10</sup> " IX, p. 134.

<sup>11</sup> " " pp. 146-147.

<sup>12</sup> " " pp. 125-126.

<sup>13</sup> " II, pp. 29-32.

<sup>14</sup> " III, pp. 229-231.

<sup>15</sup> " VIII, pp. 104, 105, 107.

<sup>16</sup> " " p. 99.

<sup>17</sup> " " p. 132.

<sup>18</sup> " I, p. 134.

<sup>19</sup> " IX, p. 11.

the Canning Adoption *sanads* in 1862 and the grant of similar *sanads* to various Chiefs in later years, as to the Central Provinces Chiefs<sup>20</sup> in 1865 and to many Bombay Chiefs<sup>1</sup> in 1890.

§ 741. Some comparatively recent cases may be mentioned in which affairs have been adjusted by *kharīta*, whereas, in treaty purposes. former days, the British Government, in like circumstances, would probably have concluded a treaty or formal agreement of the nature of a treaty with the States concerned. Between 1819 and 1821 the district of Merwara, inhabited by an independent and predatory race, was subdued by a British force nominally aided by Udaipur and Jodhpur troops. The States claimed shares in the conquered territory, and three *parganas* were assigned to Udaipur, two to Jodhpur, and four to the British Government. The Udaipur portion of the district is known as Mewar-Merwara, and the Jodhpur portion as Marwar-Merwara. It was speedily found impracticable to pacify and improve the country by means of a triple Government; and it was determined in 1823 to raise the Merwara Local Battalion and to bring the whole district under British management. Under that management it has remained up to date, but the sovereignty of the Jodhpur and Udaipur States is still acknowledged. The States agreed to contribute Rs. 12,000 annually to the

**The Marwar-Merwara case, 1885.** cost of the local corps, and the Jodhpur Darbar executed an engagement to this effect in 1824, and by the same document made over to the British Government twenty-one villages of Marwar-Merwara for eight years. "This engagement was renewed"—we quote from Aitchison<sup>2</sup>—"in 1835 for nine years, and seven additional villages were put under British administration. This lease expired in 1843. The Maharaja then resumed the seven villages, but expressed his readiness to leave the remaining twenty-one under the administration of the British Government for such time as might suit their convenience. But no definite arrangements were made; and on this unsatisfactory footing the administration of these villages remained until 1885, when the British Government and the Darbar agreed that Marwar should retain its sovereign rights in the villages, and receive Rs. 3,000 a year for them, and if ever a net profit should be derived from them, Marwar should receive 40 per cent. of it. On these conditions Government retains full and permanent administrative control over the villages." These conditions were recorded, not in any treaty or formal agreement of the nature of a treaty, but in a *kharīta* dated August 2, 1885, from the Viceroy to the Jodhpur Chief. The annual payment of three thousand rupees is made on account of the revenue of the tract without regard to the amount actually realised from the villages by the British Government.<sup>3</sup>

§ 742. The facts connected with the Udaipur portion of Merwara, known as Mewar-Merwara, are very similar. No formal engagement was executed by Udaipur in 1823 or 1824, but in 1833 an "Agreement" in four articles, drawn like a treaty, continued existing arrangements for a period of eight years. This agreement expired in 1841, but British management continued. Between 1846 and 1848 attempts were made to procure the permanent transfer of both Mewar-Merwara and Marwar-Merwara to the British Government, but the negotiations failed, and in 1848 the Government of India directed that "the existing system for the management of the Merwara districts" should be "continued for the present without any definite engagement." Udaipur, in addition to the Rs. 12,000 a year towards the cost of the local battalion, had to pay Rs. 4,000 a year to "cover the expenses of the collection of the revenues," and Rs. 50,000 a year towards the cost of the Mewar Bhil Corps. In 1880 there was an apparent but not undisputed balance of Rs. 76,000 against Udaipur, and in 1881 it was arranged that these arrears should not be claimed, and that in future the revenue of Mewar-Merwara should be taken in full discharge of all the contributions due from Udaipur on account of the two regiments—the Mewar Bhil Corps and the Merwara Battalion—and that no accounts should be rendered to Mewar of the revenues of the assigned tract. This arrangement was not

<sup>20</sup> See paragraph § 208, *supra*.  
§ 356, *supra*.  
Volume III, page 130.

<sup>1</sup> Pro., Internal A, January 1885, Nos. 244-250.  
" " August 1885, Nos. 22-25.  
" " October 1885, Nos. 1-6.

altogether satisfactory to the Udaipur Chief, who feared that his rights of sovereignty might be impaired in the eyes of his subjects by the discontinuance of the system of rendering accounts, and that he might be a loser if the Mewar-Merwara revenue was enhanced. Eventually it was settled by an exchange of *kharitas* between the Viceroy and the Chief that any surplus proceeds of the Mewar-Merwara revenues over and above the Rs66,000 a year due from Udaipur should be paid to that State, and that the Chief should be annually informed of the amount of the revenues. At the same time he was given a distinct assurance that the arrangements of 1881 were not intended to prejudice or in any way affect his rights of sovereignty over the Mewar-Merwara tract. The Chief was at this time prepared to cede Mewar-Marwara to the British Government in exchange for some outlying villages belonging to the Gwalior Darbar which Sindhia might have been induced to give up by a cession to him of some British territory from the North-Western Provinces. But this idea was somewhat reluctantly abandoned on account of the supposed objection of the inhabitants to the transfer.<sup>4</sup>

§ 743. We have detailed in paragraph § 250 the particulars of the Jhansi and Morar exchange effected in 1886 with Maharaja Sindhia and completed in 1888 by a rectification of boundaries. This case is a good illustration of a preference for *kharitas* as compared with

The Jhansi and Morar exchange, 1886. treaties or formal agreements in recording engagements with Native States. The conditions expressed in the Viceroy's *kharita* of February 24, 1886, ratifying the exchange, were drafted by the Agent to the Governor-General in the form of four articles resembling a treaty.<sup>5</sup> But that form was not adopted. Moreover, the conditions embodied in the *kharita* varied the obligations of previous treaties. The British garrison was to be withdrawn from the Gwalior fortress and the Cantonment of Morar, though by article 8 of the treaty<sup>6</sup> of 1860 the British Government had engaged to keep a subsidiary force constantly stationed within the Maharaja's territories at a cost of not less than sixteen lakhs of rupees. The obligation, however, to assist the Maharaja contained in article 6 of the treaty of 1844 was expressly maintained. It was further agreed that the Maharaja might raise in addition to the infantry force which he might entertain "*under existing treaties and engagements, 3,000 drilled infantry soldiers on the understanding that*" his regular cavalry should not be increased beyond its then strength of 2,000 men. When the supplementary exchanges for boundary purposes were being arranged in 1887 and 1888, the question was twice distinctly raised whether effect should be given to them by a formal treaty or engagement or by an interchange of *kharitas*, and the decision was in favour of the latter method.<sup>7</sup>

#### Summary.

§ 744. Summarising the results arrived at we may say that—

(1) *In making arrangements between the Paramount Power and subordinate States, it is well to avoid the forms of international treaties.*

(2) *An engagement which consists of a grant, concession or reward to a Ruling Chief, proceeding from the grace and favour of the British Government, may appropriately be expressed in the form of a sanad or of a document of the nature of a sanad.*

(3) *A compact between the Paramount Power and a subordinate State may often be appropriately expressed in a *kharita* from the Viceroy or by means of an exchange of *kharitas* between the Viceroy and the Chief concerned.*

§ 745. We have already had occasion in several different connections to remark on certain points connected with the interpretation of treaties and other written engagements between the British Government and the Native States. Thus we have shown in the cases of Berar (paragraph § 5) and Kuch Behar (paragraph § 215) that documentary claims may be set

Pro., Finance A, August 1881, Nos. 4-22.  
Pro., Secret L, August 1883, Nos. 14-27.  
" " January 1884, Nos. 4-15.  
" " March 1886, No. 99.

<sup>4</sup> No. 2P-11A, dated December 2, 1885, from Sir Lepel Griffin.

<sup>5</sup> Aitchison, IV, page 83.

<sup>7</sup> K. W., Pro., Internal A, November 1883, Nos. 20-31, pages 1, 2 and 3.

aside by overt acts; and that a uniform and long continued practice acquiesced in by the party against whom it tells, must be held to exhibit the relations between the parties which in fact exist. It is not permissible (see paragraph §13) to go behind a treaty to impugn the reasons which induced the signatories to conclude it. No treaty (see paragraph § 38) can bind the British Government to force the people of a Native State to submit to misrule. Moreover, obligations of so solemn a character as that possessed by the Canning Adoption *sanads* must not be taken to include more than is clearly stated in them. This point was insisted upon by the Secretary of State in the final despatch in the Alwar case (paragraph § 328).

§ 746. In the Rampur Cessions case (paragraphs § 245 and § 259) it clearly appeared that the form of the document by which a cession purports to be made is immaterial, and we said that we would return in this chapter to the arguments

Minute of Sir Henry Maine in the Rampur Cession Case, 1868. by which Sir Henry Maine contended that in a grant of limited sovereignty over territory to a Ruling Chief the intentions of Government might be appropriately recited in a *sanad*. Referring to the opinion of Mr. Cowie in the Rampur Cession case, Sir Henry Maine,<sup>8</sup> in his minute of August 11, 1868, said—  
 “I understand him to maintain that a treaty is indispensably necessary for an effectual alienation, and that a *sanad* is as inappropriate as would be, in European international transactions, an English conveyance with its multiplied references to feudal rules and the statute of uses. Now a *sanad* is undoubtedly the instrument by which the Indian Government ordinarily grants land and revenue to one of its subjects, and I quite admit that in a case where the intention to alienate sovereignty, or to dispose of revenue, was doubtful, Mr. Cowie’s reasoning would be entitled to weight. The *sanad*, however, which is before us, clearly recites an intention to confer the same rights over the transferred territory which the Nawab enjoys over his inherited dominions, and hence Mr. Cowie must be assumed to make everything turn on the employment of a *sanad* instead of a treaty. It must be recollected, however, that in international law and in the quasi-international law applicable to India, facts are everything; and the fact seems to be established by the Secretaries’ notes that *sanads* have been about as frequently employed as treaties in adjusting and declaring the relations of the Native Chiefs to the British Government. It was, in fact, the ordinary instrument of contract, grant or cession used by the Emperors of Hindustan, and so it has descended to us. The most important privilege ever conceded by the British Government to Native Princes, the unqualified right of adoption, is solely secured by *sanad*, and parts of territories,<sup>9</sup> even of Chiefs so considerable as the Maharaja of Patiala, are held under no other instrument. It would seem, too, that *sanads* are not necessarily unilateral. They often impose on the recipient obligations which he is taken to have assented to through the act of acceptance. They appear, in fact, to have no distinctive peculiarity, except that they are couched in the tone of a superior addressing an inferior . . . . So far, however, from being anomalous, the assumption of superiority in a *sanad* is highly appropriate and natural in India; and I am convinced that examples of a similar assumption having become a common form might be produced in Europe, if the instruments were examined to which the *quondam* Emperors of Germany were parties.

“I venture, however, to think that the doctrine of the extreme importance of the distinction between a treaty and a *sanad* betrays a deeper misapprehension. If European principles are to be applied to the interpretation of the relations between the Indian Government and the Native Chiefs, they must be rather principles of the law of nations than those of English Municipal law. Now, while it is very natural for an English lawyer, who is accustomed to rights and duties flowing directly from conveyances, to attach the greatest importance to their form, it cannot be said that International Law attributes any such importance to documents. International Law has ‘modes of international acquisition’ known to itself, which are set forth at length in the text books (e.g., *Phillimore*, vol. I, pages 235-315); but, following Roman Law, it regards documents not as modes of acquisition, but as evidence of

<sup>8</sup> *Pro.*, Political A, August 1868, No. 321.

<sup>9</sup> In point of fact the whole territories of Patiala, Jind and Nabha are held under *sanads*.

acquisition according to a particular mode. It is not, I think, presumptuous to affirm that (though the expression may sometimes be found in writers of some authority) it is in strictness incorrect to say that territory is acquired by treaty. By a treaty the high contracting parties may bind themselves to effect or suffer an acquisition of territory after one of the modes known to public law, or again, a treaty may furnish irrefragable evidence that such an acquisition has taken place, or it may supply binding admissions of the fact. But acquisition or alienation cannot be said to be effected by the treaty itself or any other document. From these principles appears to flow the broad doctrine of Wheaton that the form of a treaty is immaterial, and it would seem to be a legitimate conclusion from them that there was nothing inappropriate in the *sanad* given to the Nawab of Rampur. Strictly speaking, the alienation was effected by the delivery of the territory to the Nawab. The *sanad*, reciting the intentions of the Crown, supplied what in Roman and International Law is known as the *justa causa*."

§ 747. We may add here that in November 1885, in reply to an inquiry made by the Bombay Government, the Government of India stated that no particular form of agreement has been prescribed for the cession of railway land and jurisdiction. "It is sufficient," they said, "if the agreement clearly specifies the cession of full jurisdiction and administrative control short of sovereign rights over all lands and premises occupied or required for railway <sup>10</sup> purposes."

§ 748. The "*quasi-international law applicable to India*" mentioned by Sir Henry Maine is the same thing as the Indian Political Law so often referred to in these volumes. In illustration of the principle that in Indian Political Law

The terms of an agreement may be varied by consent without the formal alteration of documents.

facts are everything, we may refer to the further and subsidiary principle that it is not always necessary to make a formal alteration in an agreement between the British Government and a Native State when a departure from the terms of the agreement has received the assent of both parties to it. Thus, as we have seen in extradition cases with Baroda, the production of a *prima facie* case against the accused (see paragraph § 584) is an accepted procedure on both sides. But it has not been considered necessary to amend article 9 of the Baroda treaty of 1817 which provides that "offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without delay or hesitation." Nor would this provision be so construed as to admit a demand by Baroda for the extradition of a European British subject—a demand opposed to general practice with regard to all Native States. Another case in which facts have ceased, at all events temporarily, to correspond with written engagements, is that of the salt agreements of certain States in Rajputana. By these agreements concluded in 1879, 1881 and 1882 certain restrictions were imposed on traffic in salt, and the Government of India in February 1898 resolved that the restrictions on import, export and transit of salt in the States of Alwar, Bhartpur, Kishangarh, Shahpura, Lawa, Dholpur, Bundi, Tonk, Karauli and Jhalawar, and the restrictions on import only which the Kota State was bound to enforce, might be withdrawn "tentatively and without prejudice to the complete rights of Government to re-enforce the treaty stipulations, should such a course be thought necessary for the protection of the British salt revenue." They added that no formal alteration of agreements seemed to be required.<sup>11</sup>

§ 749. In summarising the little we have to say on the interpretation of treaties we will use the words "treaty" and "formal agreement" in the sense in which we used them in the summary given in paragraph § 736.

Between a treaty and a formal agreement there is no distinction in principle so far as either document defines the obligations of the parties to it. In our summary we therefore think it quite legitimate to extend to formal agreements certain conclusions which have been actually expressed with reference

<sup>10</sup> Government of India, Foreign Department, to Bombay, No. 3822-I., dated November 12, 1885. Pro., Internal A, October 1886, Nos. 386-387.

<sup>11</sup> Pro., Internal A, March 1898, No. 582. Aitchison, III, pages 124, 127, 220, 228, 231, 261, 255, 276, 294, 336, 352. For another illustration of the point in the text, see paragraph § 186 E, above.

to treaties only. As between the Paramount Power and the subordinate States, *sanads* often take the place of treaties between independent powers. Treaties and *sanads* are equally solemn forms of engagement, and if *sanads* must not be held to include any obligation beyond what they actually express, the same rule must apply to treaties. Our summary, then, will stand thus:—

(1) *We may not go behind a treaty or formal agreement to impugn the reasons which induced the parties to conclude it.*

(2) *No treaty or formal agreement can bind the British Government to permit misrule.*

(3) *No treaty, sanad, or formal agreement must be taken to include any obligation beyond what is clearly stated in it.*

(4) *Sanads often impose on the recipient obligations to which he assents by accepting the grant.*

(5) *No special form of agreement is prescribed for the cession of jurisdiction by a Native State to the British Government. It is enough that the cession should be clearly specified.*

(6) *In Indian Political Law facts are everything. Uniform and long-continued practice shows actual relations. Documentary claims may be set aside by overt acts; and the terms of written engagements may be varied by consent without the formal alteration of documents.*

§ 750. The last subject which we shall notice in this chapter is the participation

The participation of India in Commercial Treaties between the British Government and Foreign Powers.

of India in Commercial Treaties between the British Government and Foreign Powers. These treaties usually contain an article, known as the Colonial Article, providing that the stipulations of the treaty shall apply to British Colonies and outlying possessions, so far as the laws permit, with the exception of certain specified colonies such as Canada, Newfoundland, the Australian Colonies, Tasmania, New Zealand, the Cape and Natal. The excepted colonies then practically have the option of obtaining the benefits of the treaty on the condition that intimation shall be given within a certain fixed time that the stipulations ought to be made applicable to any of them.

The general rule now is that when a Commercial Treaty is negotiated with a Foreign Power, India shall be included in these lists of excepted colonies and possessions; and that the Foreign Office in England shall then, in each case, ascertain from the Secretary of State for India whether the stipulations of the treaty shall or shall not be made applicable to that country.<sup>12</sup>

§ 751. The circumstances and discussions which led to the adoption of this rule

Exclusion of India from the Commercial Treaty with Italy, 1884.

have some constitutional importance and interest. A Commercial Treaty between Great Britain and Italy was ratified on June 20, 1883, and the Secretary of State inquired whether its stipulations should be made applicable to British India as the Colonial article allowed. That article did not contain the words "so far as the laws permit"; and Article XIII of the treaty declared that—"The subjects of each of the contracting parties who shall conform themselves to the laws of the country shall have full liberty, with their families, to enter, travel, or reside in any part of the dominions and possessions of the other contracting party" Under section 3 of Act III of 1864 the Supreme and Local Governments within their respective jurisdictions "may, by writing, order any foreigner to remove himself from British India, or to remove himself by a particular route to be specified in the order." The Act also contains other provisions, which need not be particularised, enabling the Government of India to take further precautions in respect to foreigners residing or travelling in British India. The Government of India replied<sup>13</sup> to the Secretary of State that they were prepared to accept the treaty on all points except in regard to Article XIII, which could not be accepted without reserve. "The reservation," they said, "made in the draft treaty, that acceptance by British colonies or dependencies would be given only 'so far as the

<sup>12</sup> Pro., External A, May 1885, Nos. 432-433.

<sup>13</sup> Pro., Finance Department, Separate Revenue A, November 1883, Nos. 1359-1367.



laws permit,' has been omitted in the treaty as signed. Under Article XIX of the treaty"—(the Colonial Article)—"our acceptance will therefore have this consequence, that where our law conflicts with the terms of the treaty, we must abstain from enforcing it, or where it is not legally in our power to do this, we must amend our law. This being so, it becomes important to consider whether there is anything in Article XIII which might be regarded as inconsistent with the powers given to us in respect of foreigners by our Act III of 1864, or as affecting the exercise of these powers.

"The Act in question is one which we have not of late years had occasion to enforce, and we trust we may long be spared the necessity of enforcing it; but it is a standing portion of our law and one which we might have occasion to enforce against the subject of a foreign State, even in times of the most complete tranquillity, and on grounds which might not always be satisfactory to the States concerned. We need hardly say that, though the powers which the Act confers would be very rarely used, we could not consent to their abandonment or curtailment in favour of the subjects of any European State, and we cannot but apprehend that, if we were to accept Article XIII without reserve, it might be contended that we could no longer exercise these powers in the case of Italian subjects, or at least that, if we did exercise them, we should be under a special and peculiarly stringent obligation to justify our action to the Italian Government.

"Of the form in which the reservation should be made Her Majesty's Government will be the best judge, but we are of opinion that it should be so clear and unmistakable that there would be no room for contending that our acceptance of the treaty has in any way altered the position of Italian subjects as regards Act III of 1864, or any similar general Act which may from time to time be in force in British India.

"Subject to this reservation, we shall be glad to know that the treaty can be applied to India."

The treaty would have extended the "most-favoured-nation" treatment to Indian commerce and navigation and thus have prevented the perhaps somewhat remote possibility of differential duties being imposed in Italy on Indian merchandise weighting it as compared with similar goods from some other countries.<sup>14</sup> But the Italian Government rejected the proposal of the Government of India. India, they held, was free to accept the treaty or not as might be preferred, but was not entitled to couple its acceptance with conditions or reservations.

§ 752. This decision of the Italian Government was acknowledged by the

Government of India on May 30, 1884. India desires in 1884 to be excluded from the proposed treaty with Paraguay. But meanwhile on January 24, 1884, the

Secretary of State forwarded the draft of a proposed new treaty with Paraguay and asked, with reference to the Colonial Article, whether India should become a party to the treaty. The Government of India were reluctant to discuss at large the difficulties arising out of these commercial treaties in consequence of its relations with Native States. But in the despatch of May 30, 1884, the Governor-General in Council went one step further than he had gone in the previous despatch about the Italian treaty, for he alluded not only to the possible expulsion of foreigners from India, but to the presence of Europeans in Native States. The Government of India regretted the news that Italy would not agree to the proposed reservations grounded on the Act of 1864. "The exports," so it was said in the despatch<sup>15</sup> of May 30, 1884, "of cotton, indigo, wheat, rice, silk, hides, jute and oilseeds from India to Italy form a trade of considerable magnitude, and the treatment of the most favoured nation, which it is within our power to secure, is a consideration to which we are inclined to attach much importance. But, on the other

<sup>14</sup> Italy has not struck at Indian imports. But, writes Mr. O'Connor in a note dated November 3, 1894—"Italy has a General Tariff and a Conventional Tariff, the rates in the latter (which are substantially lower than the rates in the former) applying to countries with which Commercial Conventions have been concluded. Indian goods come under the General Tariff; but as it happens most of the

goods we send to Italy (being raw material) are free of duty or are of such a nature that the countries with which conventions have been concluded do not produce and cannot compete in them. In a few articles—e.g., carpets,—there is a difference."

<sup>15</sup> Pro., Finance Department, Separate Revenue A, June 1884, Nos. 1017-1024.

hand, this commercial advantage is offered to us at the cost of abandoning certain powers which we have hitherto held necessary to the public security of India.

“The repeal of Act III of 1864 would not be the only measure which would be forced upon us. Your Lordship is aware of the clause in many of our engagements with Native States under which the admission of foreigners into their service or the residence of Europeans in those States is placed under restrictions. Upon full consideration of the matter, we do not feel justified in exchanging the power of control, which we now possess, by law or treaty, over the settlement of foreigners in India for the commercial benefits which the Italian treaty might possibly secure for us. To the Paraguay treaty somewhat similar considerations apply, and it is moreover a matter of comparatively small concern to us, as there is little or no intercourse between India and Paraguay.

“Under these circumstances, we beg that Your Lordship will take the necessary steps to intimate that the Government of India is not in a position to avail itself of the privilege of participating either in the commercial treaty between Italy and England, or in the proposed treaty with Paraguay.”

The India Office supposed that the objection to participation in the treaty from Italy arose solely from the omission from that treaty of the reservation “so far as the laws permit,” and for some time overlooked the circumstance that this objection had been widened by the despatch of May 30, 1884. Hence it came about that when these words “so far as the laws permit” were added to the Paraguay treaty, India was included in it. But before ratification the officer on the spot was directed to make a declaration excluding India if this could be done without allowing the entire treaty to fall through. A declaration was made accordingly in a protocol<sup>16</sup> dated May 10, 1886.

§ 753. Meanwhile, the India Office, being still under the impression that the

The Secretary of State in 1885 withdraws his assent to the participation of India in the proposed Treaty with Mexico.

sole ground of objection to the Italian treaty was the omission of the words “so far as the laws permit,” agreed on July 2, 1884, in urgent circumstances, and without consulting the Government of India, to India being a party to a proposed Commercial Treaty with Mexico on the understanding that these words, which duly appeared in the Colonial Article, should be retained. The receipt of this intelligence compelled the Government of India to submit in a despatch<sup>17</sup> of January 6, 1885, a fuller expression of their policy. “In accepting treaties,” they said, “on behalf of India, we have to consider the consequences of doing so with reference to the feudatory States in subordinate alliance with the British Government. The peculiar position and circumstances of those States surround the question with considerable difficulties. If we act on the supposition that any treaty which has been accepted on behalf of India is binding upon the feudatory States, which are incapable in themselves of entering into any treaty with Foreign Powers, then we become responsible for the due observance of the treaty within territories where we have not absolute powers of control and do not desire to claim them. We may find ourselves bound to resign certain rights acquired by agreement or usage which appear to us to be necessary for the security of our position; for example, the right of restricting the employment or residence of foreigners in Native States, and on the other hand we may find ourselves bound to guarantee to the subjects of Foreign Powers personal and commercial privileges, and a measure of religious tolerance only to be ensured by an amount of interference with the internal administration of Native States which would be very unpalatable to their Chiefs. If, on the contrary, we act upon the supposition that treaties accepted on behalf of India are not binding upon the feudatory States, then we find ourselves in face of difficulties of another kind. In the first place such a course of action must tend to encourage the Native States in ideas of independence and of isolation from the body politic which are hardly consistent with their position as feudatories of the British Crown, and which may lead to serious embarrassment; and in the second place we may find that Foreign Powers expect us,

<sup>16</sup> Pro. Finance Department, Statistics and Commerce, August, 1886, Nos. 238-239.

<sup>17</sup> Pro. External A, January 1885, Nos. 129-133.

not without some show of reason, either to secure to their subjects within the feudatory States the privileges to which they are entitled in India, or to let them deal direct with those States themselves, which of course could not be allowed. Either supposition, therefore, involves possible complications of some importance; and we have hitherto thought it expedient to avoid those complications as far as possible by avoiding the acceptance on behalf of India of any treaties which are not really of material advantage to the Empire.

“We are sensible of the drawbacks involved by this state of affairs, and if the occasion should arise when further hesitation on our part would involve an undoubted sacrifice of material advantages to British India, we should then be prepared to suggest some method of meeting the difficulties of the situation. But neither in the case of Mexico, nor in that of Paraguay, do we see any sufficient reason for departing from our present policy.”

These views were accepted by the Secretary of State and directly led to the establishment as between the India and Foreign Offices in England of the general rule mentioned in paragraph § 750 whereby India is to have the option of participating in future commercial treaties.<sup>18</sup> The India Office agreed that this option might be given to India in the proposed treaty with Mexico, as also in a proposed treaty, which in February 1885 was being negotiated with Uruguay.<sup>19</sup> But the assent of the Secretary of State to the actual participation of India in the treaty with Mexico was withdrawn and in the end India was not included in that treaty.<sup>20</sup>

§ 754. At the same time, that is, in February 1885, it was proposed to continue the Commercial Treaty of 1862 between Great Britain and the Republic of Salvador which was held to apply to India. The Foreign and India Offices in England arranged to consult the Government of India, and further that if a decision should be necessary before the reply of that Government was received, there should be inserted in the instrument by which the treaty was prolonged a clause enabling India to withdraw from the treaty within twelve months. The Government of India telegraphed to the Secretary of State that it was desirable that India should withdraw from the Salvador treaty, and that if conditional adhesion to the treaty had already been signified, twelve months' notice of withdrawal should be given.<sup>1</sup> Eventually India was included in the Colonial Article of this treaty and gave due notice of her wish to withdraw from its operation. Intimation was conveyed accordingly to the Government of Salvador and India has thus been excluded from the operation of the treaty.<sup>2</sup>

§ 755. In the course of the discussions on the treaty with Mexico it was at one time supposed that the treaty of commerce and extradition with Portugal, (already referred to in paragraph § 32 as the Goa Treaty,<sup>3</sup> 1878) afforded a precedent for assigning to Native States for treaty purposes the position of bodies politic separate from British India in relation to Foreign Powers. But a valuable note<sup>4</sup> of September 19, 1884, by Mr. Martindale, then employed in the Foreign Office, and some subsequent circumstances show conclusively

The Goa Treaty of 1878 is not a precedent for separating the States from British India in relations with Foreign Powers.

that this interpretation cannot now be placed on certain provisions of the Goa treaty of 1878 and of the Convention of 1880 which followed upon it. The principle upon which several articles of the treaty were framed was that the privileges conferred and engagements made by it in respect of freedom of commerce, navigation and trade, residence in the dominions of either party, the use of ports, customs and the regulation of traffic in arms, ammunition and military stores, should extend to Native States named in lists to be subsequently furnished to the Goa authorities.<sup>5</sup> A protocol dealing with extradition was signed on the same day as the treaty and executed as an extradition convention a year later, in

<sup>18</sup> Pro., External A, May 1885, Nos. 472-483.

<sup>19</sup> India was included in the optional list in the Uruguay treaty and declined to participate in it — Finance Department, Statistics and Commerce, Pro. A, July 1886, Nos. 222-226.

<sup>20</sup> Pro., Finance Department, Statistics and Commerce, May 1889, Nos. 1080-1083.

<sup>1</sup> Pro., External A, May 1885, Nos. 472-477.

<sup>2</sup> Pro., Finance Department, Statistics and Commerce, January 1888, Nos. 154-156; and July 1888, No. 1191.

<sup>3</sup> This treaty was concluded on December 28, 1878, and ratified on August 6, 1879.

<sup>4</sup> K.-W. of Pro., External A, January 1885, Nos. 120-133. †

<sup>5</sup> Articles IV, VII, and XVIII. Pro., Political A, December 1879, No. 525.

January 1880. In this convention it was similarly provided<sup>6</sup> that lists should be supplied of the Native States which, with their subjects, would be entitled to be placed, for extradition purposes, "upon the same footing as British India and the subjects of Her Britannic Majesty." The negotiations preliminary to the Goa treaty began at Simla in 1877, the delegates being for India Sir Alexander Arbuthnot and the Hon'ble T. C. Hope, with Mr. John Jardine as their Secretary, and for Portugal, Senhor Soares. The delegates failed to agree, and one fundamental point upon which they differed was the extension of some of the privileges and engagements above mentioned to Native States without the previous consent of the Portuguese Government to that extension in the case of each State separately. "We explained," said the India delegates in their report<sup>7</sup> of August 11, 1877, "that all Native States in India hold the position which in Europe is well known by the term 'semi-independent States;' that though they might differ more or less from British India as regards their Municipal law, they had no international rights, could not be parties to any international compact, and in the matter of their relations with Foreign Powers were undoubtedly one territory with British India. Consequently, if we assimilated any of them into our system in the matters in question, Portugal was bound, on notice of the fact, to treat them like British India in such matters, just as she would be if we conquered and annexed them." Senhor Soares, however, maintained his objection, and the Indian delegates adhered to the article (Article IV in the treaty as signed) which gave expression to their views. The Government of India completely approved the proceedings of their delegates, and in 1878 the negotiations, thus temporarily suspended, were brought to a successful conclusion, Mr. Hope having been deputed to Lisbon.<sup>8</sup> Thus, though a concession was probably made to the wishes of the Portuguese authorities in the agreements to furnish certain lists of States, the principle of the identity of the States with the rest of the British Indian Empire for the purposes of treaties with Foreign Powers was very clearly asserted in the negotiations.

§ 756. It is true that in working the Goa Extradition Convention the British Government was induced to make extradition agreements with the States of Dharampur and Jauhar; but this was a somewhat curious result of the law and the understanding arrived at. In June and July 1881 the Portuguese authorities pointed out that no list of States such as that mentioned in the convention had been supplied to them; and the Governor of Damaun in particular urged that Dharampur and Jauhar should be brought within the terms of the convention. The effect of the convention was that Goa was not required to surrender a Portuguese subject nor British India a British Indian subject; but each Government was to punish its own subjects found in its own territory after having committed an offence in the territory of the other. If Dharampur and Jauhar were to be placed on the same footing as British India, and a Dharampur or Jauhar subject committed an offence in Portuguese territory and took refuge in British territory, would he not go scot-free? A foreign subject, in the eye of our Municipal law, would have committed an offence in foreign territory; and on usual legal principles our ordinary Courts of Justice would have no jurisdiction to try him. This difficulty was met by the proposal that such an offender should be deported to his own State for trial there; but then arose the further query, under what law could we deport him? The agreements with Jauhar and Dharampur were a legal device to surmount this obstacle.<sup>9</sup> As we have seen in the chapters on extradition, section 1 of Act XXI of 1879 declares that the procedure provided by any extradition treaty shall be followed in every case to which it applies. We therefore made agreements with Dharampur and Jauhar that we would surrender to them their subjects found in British India and charged with having committed any of certain specified offences in Portuguese India; and that these surrenders should be made in accordance with such procedure as the Governor-General in Council might from time to time prescribe. The deportations, therefore, authorised by the

<sup>6</sup> In clause (d).

<sup>7</sup> Pro., Secret, November 1873, Nos. 156-168.

See No. 160, page 683 of Pro. Volume.

<sup>8</sup> Pro., Political A, December 1879, Nos. 499-532.

<sup>9</sup> See K.-W. of Pro., Internal A, December 1882, Nos. 25-31, where all this is clearly explained in a note of July 19, 1882, by Mr. J. A. Crawford. The agreements are in Atchison, VII, pp. 91, 104.

procedure so prescribed became legitimate under our law. Later on, when the question of supplying a full list of States to the Goa Government again came under consideration, it was thought that agreements such as those made with Dharampur and Jauhar need only be made as occasion arose.<sup>10</sup> But this question was dropped because the Goa treaty, 1878, terminated<sup>11</sup> on January 14, 1892, and the convention fell with it. In a despatch<sup>12</sup> advising that we should shake ourselves free of the treaty, the Government of India in substance condemned the articles referring to Native States as practically useless; and the correspondence connected with the draft extradition convention with Portugal<sup>13</sup> shows that the convention of 1880 was defective in several particulars.

§ 757. Nearly all the rest of the case has already been told in paragraph § 32. Whatever doubts there may be as to the political propriety of the plan adopted in the Goa treaty of 1878 and the convention of 1880, the case has ceased to have any force as a precedent, both because these documents are no longer operative and because the true position as now understood has been clearly established in the draft extradition convention and connected correspondence. In those papers, for purposes of extradition to and from Portuguese India, the Native States are treated as identified with British India itself. The negotiations, however, with Portugal for the conclusion of a revised convention fell through; because the Portuguese Government would not agree to surrender any person charged with an offence punishable with death.<sup>14</sup> The attempt to conclude a new treaty with Portugal to replace the Goa treaty likewise failed. Mr. Carey, who was deputed to Lisbon, did not succeed in inducing the Portuguese authorities to meet the wishes of the Government of India.<sup>15</sup>

#### Summary.

Our conclusions on the above review may be thus stated:—

*India should have the option of participating in commercial treaties with Foreign Powers in case that course should be expedient in the interests of the Empire; but, as a rule, it is not advisable that India should participate. This rule is founded partly on British law with respect to foreigners in India,—a law which cannot be abrogated without political danger,—and partly on the nature of the relations existing between the British Government and the Native States. Generally the result of the discussions on these commercial treaties has been to emphasise the principle, already fully illustrated, of the political isolation of Native States.*

<sup>10</sup> See Sir A. Scoble's note of October 25, 1889, in K.-W., Pro. Internal A, December 1889, Nos. 203-207.

<sup>11</sup> Pro., Secret I, July 1891, No. 24.

<sup>12</sup> No. 346, dated October 22, 1890, Pro., Secret I, July 1891, No. 31.

<sup>13</sup> Pro., Internal A, December 1892, Nos. 15-31.

" " July 1893, Nos. 23-18.

" " September 1893, Nos. 265-274.

<sup>14</sup> " " " " 265-274.

<sup>15</sup> Pro., Secret I, June 1892, No. 35.

## CHAPTER XXII.

### TITLES AND CEREMONIAL.

§ 758. In this Chapter we shall deal chiefly with Native titles and the salutes of the Sovereign and of Ruling Chiefs; and we shall notice one or two points of importance connected with Darbars, though we shall avoid all detail of the etiquette observed in the public or private receptions of Ruling Chiefs. There are several other matters more or less connected with titles and ceremonies in India, upon which for various reasons we do not propose to enter. The whole subject of British Orders of distinction, such as the Star of India and the Order of the Indian Empire, is excluded, because, with reference to the general plan of these volumes, nothing need be said of it except that the Rulers and subjects of Native States are eligible for these decorations, as there are abundant instances to prove; and that is the only point in connection with these Orders of distinction which is material in considering the practice and policy of the Government of India in its relations with Native States. To the grant of foreign Orders of distinction to Ruling Chiefs we have alluded in paragraph § 30. This question has not yet been completely worked out, particularly as it affects British and State subjects; and in these circumstances it seems best to add nothing to the published regulations.<sup>1</sup> It is well known that at the time of the Delhi Assemblage the Government of Lord Lytton proposed<sup>2</sup> to initiate a Native Peerage, or *Libro d'Oro*, for India, in which should "be enrolled the names and ancestry of the Ruling Chiefs and Native Noblemen," and to establish "an Heraldic College at Calcutta with the object of authoritatively recording the ancestry of existing Princes and Chiefs." But we shall not notice these projects, beyond making this mere allusion to them, because they were allowed to drop in November 1879. So far as they had any practical effect, it consisted in the collection of information regarding holders of titles in India generally which is on record in the Foreign Office. Having thus defined our own portion of the whole ground by marking off parts of it on which we shall not enter, we will consider first the grant of Native titles in India.

§ 759. A Resolution of the Government of India, dated May 30, 1829, stated that the question of conferring titles or other marks of distinction on the Native subjects of the British Government of India was one of acknowledged importance and had long occupied the attention of the Governor-General in Council. "The principle," so this Resolution ran, "that this essential and peculiar attribute of sovereign rule should properly be exercised by the British Government direct, instead of as formerly through the medium of the pageant Court of Delhi, was first asserted and established by the Marquis of Hastings, at an early period of his administration, but the occasions for conferring ranks upon inhabitants of the British Provinces were, from whatever cause, of rare occurrence during the government of that nobleman: and it was not until the accession of Lord Amherst,<sup>3</sup> that the practice of granting titles came actively and systematically into use. During Lord Amherst's administration, titles and various other honorary distinctions were bestowed on several respectable and meritorious individuals, both in acknowledgment of services and good conduct during the prevalence of war on the Eastern

<sup>1</sup> These will be found in Foreign Department Notification No. 900-G., dated 29th April 1886.

<sup>2</sup> See paragraph 5 of Secretary of State's despatch No. 59, dated November 20, 1876, Pro., Political A, December 1877, No. 309. Also K.-W. of Pro. A, Political I, August 1883, Nos. 92-100, pages 6-9.

<sup>3</sup> The Earl of Amherst assumed charge of office on August 1, 1823, and Lord William Bentinck on July 4, 1828.

Frontier, and to reward and encourage acts of public spirit and liberality connected with the formation of roads, the endowment of colleges and the promotion of other institutions tending to the welfare and improvement of the native community. The value attached to grants of this nature by the society at large is sufficiently evidenced in the numerous applications which have been brought forward at different times, and are now actually depending, for similar distinctions.

“Entirely concurring in the wisdom and expediency of the course above indicated, the Governor-General in Council has no hesitation in determining to follow up the line marked out by preceding administrations, relative to conferring rank on our Native subjects; but His Lordship is at the same time desirous, both that some rules should be framed for regulating the distribution of titles, and also that the principles on which Government intends to act in granting them, and the proper channel of application, should be more generally known and distinctly understood than appears at present to be the case.”

Then followed some instructions, which it is unnecessary to repeat, regarding the “proper channel of application.” The Resolution continued—

“Titles will be awarded on the following grounds:—

“1st.—Services during war and in times of public emergency.

“2nd.—Meritorious conduct on the part of landholders in the interior in aiding the police; distinguished success in improving the agricultural system and the manufactures of the country; and the execution of important public works.

“3rd.—Liberal contributions for the support and promotion of beneficial public undertakings and institutions.

“Under the Native Government, titles were not, strictly speaking, hereditary, nor shall they hereafter be so considered; but due attention will at all times be paid to claims which may be considered (*sic*) by men of family to succeed to the rank enjoyed by their ancestors.

“The Governor-General in Council will of course, in all cases, exercise the most unfettered discretion in approving or rejecting applications, and the authorities recommending will advert carefully to the general character and circumstances of the candidate, so that the value of the distinction be not lowered in the public estimation by the admission of unworthy members of society to a participation in the honours and privileges of rank.”

§ 760. In sketching the history of the grant of titles in British India, there is nothing to notice, after this Resolution of Lord William Bentinck, for a period of nearly thirty years. In 1858 Dr. Balfour, the Government Agent at Chepak, brought to notice that the late Nawab of the Carnatic had freely bestowed titles and emblems or badges of honour on his relatives and dependents. The Government of Madras<sup>4</sup> concurred in the views of Dr. Balfour as to the desire for these distinctions felt by Natives of India generally and the use that might be made of that feeling in stimulating and rewarding loyalty and good service. Lord Canning, in taking up the matter, recognised “the necessity for placing the whole subject on a clear and intelligible footing;” and he appears in the first instance<sup>5</sup> to have contemplated “the careful preparation of a code of rules for this object;” but no such code was ever even drafted. Local Governments and chief political authorities were consulted and asked for a return of titles and honorary distinctions conferred by the British Government on Native Chiefs and others. On considera-

tion of the replies Lord Canning recorded his views in a despatch<sup>6</sup> to the Secretary of State, dated December 24, 1859. Of the recommendations made in that despatch for the institution of an Indian Order of Knighthood nothing need be said here. As to conferring titles, Lord Canning wrote—“I am satisfied that it will be the best policy to adhere closely to the precise titles already in use throughout India. I do not think that any success would attend an attempt to invent new titles, or to modify the meaning and value of old ones. I should deprecate an endeavour to regulate them

<sup>4</sup> From Madras, No. 446, dated July 14, 1858.

<sup>5</sup> Government of India, Foreign Department, to Madras, No. 2648, dated May 25 1859; Foreign Department Circulars

No. 8049, dated *idem*, and No. 3841, dated June 28, 1859.

<sup>6</sup> No. 27.—see selected papers relative to the grant of titles and honorary distinctions, Part I, page 117.

by any general rule for all India; for the same titles have a different value, absolutely and relatively, in different parts of the country, and some which are used in one part are not known in another. In each Local Government or Province, the designations and titles which have been almost immemorially in use should continue to be recognised and conferred. *These titles should, I submit, be in the disposal of the Queen's Representative in India.* I do not think that anything would be gained by making the grant of the titles of Maharaja and Nawab, or of any other Hindu or Muhammadan titles, referable to the Crown, and there would always be delay in doing so, and sometimes difficulty in conveying the full merits of the case referred.

"All that is necessary, as regards Native titles is, that *the Crown of England should be understood to assume to itself the authority, and to invest itself with the trust heretofore claimed by the Emperors of Hindustan over all their subjects and vassals, whether Muhammadan or Hindu; that this authority should be exercised by the Crown's Representative in India, as in fact it always has been exercised by the Governor-General; and that an official roll of all the rightful holders of titles should be kept by the Government of India.* In short, that as little change as possible be made in the practice which is already established, excepting in the preservation of a more formal and authoritative record of titles actually recognised or granted than any which at present exists.

"As to making titles hereditary, I deprecate doing this in a country where the decadence of families is sudden and frequent, and where inheritance by primogeniture is not established. *They are already often made hereditary in practice, but they should not be made so by rule and of right unless in very exceptional cases.*

"I am equally opposed to attaching as a rule any land or grant of money or allowance to the grant of a title. Where a substantial reward is due, it should be given, but not as the necessary accompaniment of a title. The tendency in India to consider honours as identical with profit is already too strong and needs no encouragement.....

"I am not prepared to say what should be the rules which should govern the grant of Indian titles. Upon this point I wish to have the opinion of the Government of Bombay regarding the titles of Western India before speaking definitively. But the rules, if any are necessary, should be as few as possible; and, as observed by the Governor of Madras, *we should take care not to over-systematise.* I also concur in Sir Charles Trevelyan's suggestion that it is proper that *all titles should be given with the previous sanction of the Governor-General.* I do not consider that this is required as a check upon the Governments of Madras or Bombay, whose recommendations would probably be accepted in all cases; but because it is desirable that all upon whom titles are conferred should derive them from the same common source, and that that source should be as near to the fountain of all honour as can be conveniently provided. In this view it will be quite right that the titles should be sanctioned by the Queen's Representative."

To so much of this despatch as related to titles the Secretary of State (Sir Charles Wood) replied<sup>7</sup> on October 31, 1860—"I will only now intimate my general concurrence in the views which you have expressed. I wait for a fuller development of them until you shall have obtained the information respecting the system of titles in Western India to which paragraph 8 of your despatch refers." In point of fact the opinion of the Government of Bombay had been received before the date of Lord Canning's despatch, but nothing further was done except that the correspondence, including the returns of titles, was printed in two small volumes entitled "Selected Papers relative to the Grant of Titles and Honorary Distinctions in India, Parts I and II, 1860."

§761. The principle thus asserted by Lord Canning and Sir Charles Wood

No one but the Viceroy can grant Native titles to Chiefs or Native British subjects in India.

that the grant of titles in India should be sanctioned by the Viceroy has been affirmed on several occasions. The title of "His Excellency" was withdrawn from the Raja of Pudukota by the Madras Government in 1859 in consequence of his extravagance, but that Government restored the title and allowed the Raja a salute of 13 guns on the occasion of

<sup>7</sup> Despatch No. 81 (Political), dated October 31, 1860.



the visit of the Duke of Edinburgh to Madras. We shall deal with the power to regulate salutes later on. As regards the title, the Government of India, after calling for a report, wrote<sup>8</sup> thus:—"I am to remark that the power to confer titles rests exclusively with His Excellency the Viceroy and Governor-General, and that the Madras Government ought not to have conferred the title of 'His Excellency' on the Raja of Pudukota without the previous sanction of the Viceroy. His Excellency in Council observes from your letter that the title was restored by the Madras Government in the hope 'that this mark of the favour of Government would be appreciated by the Raja and induce him to persevere in listening to the advice of Government in the management of his affairs.' .....

"I am ..... to request that the Raja may be informed that the indulgence is at present provisional, depending on the ultimate realisation of the hope above mentioned."

§ 762. In the same year, 1870, the Government of Bombay conferred the title of Khan Bahadur on Mr. Edalji Pestonji, Head Clerk of the Commissariat Office at Mhow, who had done good service in the Governor's Camp, in the Poona Accounts Office and elsewhere, and at the time of the Mutiny and during the Persian War. A letter<sup>9</sup> of the Foreign Department stated that "hitherto all titles have emanated solely and directly from the Viceroy as the immediate representative of Her Majesty the Queen in this country." The title was not recalled, but the request was made that "in all future cases in which the Government of Bombay may deem it expedient to bestow such an honour, the matter may be referred for the orders of the Viceroy and Governor-General in Council." Eventually, in 1875, a *sanad* conferring the title on Mr. Pestonji was issued under the signature of the Viceroy.

§ 763. In connection with the grant of titles we now come to consider the powers of Ruling Chiefs. The first case to be noted under this head is that of Muhammad Faiz Ali Khan of Jaipur. Case of Muhammad Faiz Ali Khan of Jaipur, 1870.

[In October 1869, the Political Agent at Jaipur forwarded<sup>10</sup> a translation of a note from the Council of the State announcing that in consideration of the services and descent of "Nawab Muhammad Faiz Ali Khan Bahadur" the Darbar had conferred upon him the title of "Mumtaz-ud-Daula," and praying that if approved the title might be recognised by a *sanad* from the British Government and a notification issued to that effect. The "Nawab" held considerable estates in the North-Western Provinces, and had on frequent occasions to communicate officially with British officers. Colonel Beynon supported the application as a special case in consideration of the exceptional services rendered to our Government by the "Nawab." Government called upon the Agent to the Governor-General, Rajputana, for a report; and Colonel Keatinge instituted inquiries and submitted his report in February 1870. It seemed that Faiz Ali Khan came of a good family in Bulandshahr. He had done good service in the Mutiny and had been rewarded by our Government; unfortunately the value of the reward had been impaired in the giving. The Government of India, on the recommendation of the Government of the North-Western Provinces, sanctioned the bestowal of the title of "Nawab Bahadur," and a notification to that effect appeared in the *Gazette*. Subsequently, it was pointed out that this title had been recommended by mistake. The title originally approved by the Lieutenant-Governor was that of "Khan Bahadur." The higher title was therefore withdrawn and that of "Khan Bahadur" substituted. Under the circumstances, Colonel Keatinge was of opinion that the bestowal of the title now proposed was desirable. But he suggested at the same time that Government should itself confer the honour and not recognise a title conferred on a British subject by a Native Ruler. The latter course would, he thought, form a very inconvenient precedent.

<sup>8</sup> Pro., Political A., June 1870, No. 255, and October 1870, Nos. 84-85.

<sup>9</sup> Pro., Political A., October 1870, Nos. 110-112 and Political B., March 1875, Nos. 109. For an Oudh

precedent to the same effect, see Pro., Political B., September 1871, No. 58.

<sup>10</sup> Pro., Political A., January 1870, Nos. 170-173.

[Government decided to *confer* the title of "Nawab." With regard to the title "Mumtaz-ud-Daula," it was urged that this was not, properly speaking, a title which could be recognised, but only a form of address. The Maharaja, however, was desirous that Government should recognise the designation at the same time as it conferred the title of "Nawab," and it was proposed to meet his wishes by the issue of a notification in the following form:—

["His Excellency the Viceroy and Governor-General is pleased to confer upon Muhammad Faiz Ali Khan Bahadur, C.S.I., Mumtaz-ud-Daula, of Jaipur, the title of Nawab as a personal distinction."]

[This proposal was approved by the Governor-General (Lord Mayo). Why it was subsequently overruled does not appear, but the matter ended by the grant of a *sanad*<sup>11</sup> conferring upon *Muhammad Faiz Ali Khan Bahadur* the title of *Nawab Mumtaz-ud-Daula* as a personal distinction.]

§ 764. In the next case, that of Mardan Ali Khan, of Jodhpur, the Government of India ruled that British subjects may not receive titles from Ruling Chiefs without the consent of the British Government. [In the beginning of 1872 it was brought to the notice of the Secretary of State by means of an anonymous letter, that a title almost identical with that of the Nizam had been conferred by the Maharaja of Jodhpur on one of his Muhammadan officers. The writer urged that the bestowal of the higher class of titles by Native Chiefs was an encroachment upon the rights of the Supreme Power, and should not be permitted. The matter was referred demi-officially to the Agent to the Governor-General, Rajputana, for an expression of opinion.

[Colonel Brooke replied that the title of "Nizam-ud-Daula Muhtazim-ul-Mulk Nawab Bahadur Takht Kayam Jang" had been conferred by the late Maharaja upon one Mardan Ali Khan, a British subject in the service of Jodhpur. He considered that the Nizam had just cause of complaint. The grant of the title was "a wanton abuse of prerogative," and its assumption by Mardan Ali Khan "an act of excessive arrogance." Colonel Brooke went into the general question at some length. He urged that in the case of British subjects the bestowal of all honours and dignities should rest with the British Government, and that no British subject should be allowed to accept a title from the Ruler of a Foreign State without the permission of his own Government. The grant of titles by Native Chiefs to subjects of Native States other than their own was in his opinion liable to much the same objection as their grant to British subjects. As to the grant of titles by Native Chiefs to their own subjects, he thought interference unnecessary. The privilege had always been enjoyed, and need not now be taken away. The feeling in a Native Court against any indiscriminate grant of honours would always restrict the number awarded. The Agent to the Governor-General was then requested<sup>12</sup> to ascertain from the Maharaja his reasons for conferring upon Mardan Ali Khan "titles almost identical with those of His Highness the Nizam of Hyderabad." In April 1873 Colonel Brooke submitted the explanation of the Jodhpur Darbar. The Darbar claimed to have always held the power of bestowing titles, but represented that the similarity of the titles referred to was quite accidental and professed its willingness to act in accordance with the wishes of Government. The orders of the Government of India upon the special case were conveyed<sup>13</sup> in the following words:—

["I am instructed to request that the Maharaja of Jodhpur may be informed that British subjects are not permitted to receive titles from Native Rulers without the consent of the British Government, and consequently that the title conferred by the late Maharaja Takht Sing on Mardan Ali Khan cannot be recognised by His Excellency the Viceroy and Governor-General in Council."]

With regard to the general question, the view taken by Government was as follows:—

["All we need concern ourselves with is the case of British subjects. We ought to exercise no interference with the titles conferred by Native States

<sup>11</sup> *Pro.*, Political A, September 1870, Nos. 88-91.

<sup>12</sup> *Pro.*, Political A, May 1872, No. 194.

<sup>13</sup> *Pro.*, Political A, May 1873, Nos. 229-232.

upon their own subjects so long as they are granted with discretion; nor need we take up the case of titles granted to subjects of other Native States till complaint is made.

[“As regards British subjects, titles ought certainly not to be given without the consent of the British Government. . . . There is no need, however, to promulgate any general rule. It will be sufficient to deal with cases as they arise.”]

§ 765, So far we have dealt with the grant of titles by Ruling Chiefs to Native British subjects. As regards European British subjects, it is well established that no titles conferred by the Ruler of a Native State on them can be recognised without the sanction of the Queen. The leading case here is that of Captain Clerk, Hyderabad, 1875, which, like the Jaipur and Jodhpur cases just cited, was included in Sir Mortimer Durand's collection.

[On the afternoon of May 11, 1875, the Resident at Hyderabad telegraphed<sup>14</sup> as follows:—

[“Minister has sent me a verbal message to effect that at a Darbar tomorrow morning on the occasion of His Highness's birthday, the young Nizam intends to confer on his preceptor, Captain Clerk, a native title ending with “Ud Daula” to give him importance in the Palace. Am I to refuse or permit the title to be conferred on a British subject by a Foreign State without previous sanction from my Government? Prompt reply solicited.”

[On the following morning a reply was despatched to the effect that the intention of the Nizam was most gratifying, but that the previous sanction of Her Majesty the Queen should be obtained. This communication, however, arrived in Hyderabad too late to be of any service. The Darbar had been held at an early hour, and Captain Clerk had been formally invested with the title “Mustakil Jang Istihkam-ud-daula Bahadur.” In reporting the occurrence Mr. Saunders stated that, on receipt of the Minister's verbal message the day before, he had expressed to Raja Kandaswami, the bearer of the message, his opinion that it would be impossible for Captain Clerk to accept the proposed title save with the express sanction of Her Majesty the Queen. He had desired the Raja to acquaint Sir Salar Jung immediately with his view, and had since heard that the message was duly delivered. When, however, on the following morning the Resident forwarded to the Minister the telegram of the Government of India, Sir Salar Jung replied that he “had no idea that Her Majesty's sanction was required for the bestowal of an honorary title on a British subject serving His Highness's Government,” and continued “as it has now been done, you will, of course, kindly communicate the same to the Government of India.”

[Mr. Saunders further observed that both the Minister and Captain Clerk had had ample opportunity of consulting him on the subject; and, considering all the circumstances, he was of opinion that Sir Salar Jung had tried to gain his object by a *coup de main* which was hardly worthy of him. He requested instructions for his further action in the matter. When the question came up for decision, it was urged on the one side that, although it would certainly have been proper for the Nizam's Government to communicate beforehand to the Resident its intention of conferring the title in question, the title itself was unobjectionable. In the case of a native serving a Native State a suitable title would be necessary to give due weight and dignity to the office, and so long as currency was not sought for the title outside the State conferring it, Government need not interfere. The same reasons might not perhaps apply in the case of an English tutor serving a minor Prince, but still so long as the title was used locally, and there was no pretension to extending its use beyond the Native State which granted it, it would seem to be perfectly harmless. On the other hand, it was argued that the conferment of the title in the present case without proper communication was a slight put upon the Resident, that the necessity of obtaining the Queen's sanction before a title of this kind could

<sup>14</sup> Pro., General A, July 1875, Nos. 37-39.

be conferred or accepted was perfectly well understood, and that there was nothing whatever in Captain Clerk's case to make a title of the kind specially requisite.

[The orders of Government<sup>15</sup> were conveyed in the following words:—

“His Excellency in Council is gratified to learn the high esteem in which Captain Clerk is held by His Highness the Nizam, but he is constrained to express his regret that, before proceeding to confer an honorary title on Captain Clerk, reference was not made to the British Government through the Resident. Under the circumstances of the case the Governor-General in Council is unable to recognise the title which has been conferred on Captain Clerk, as no titles conferred upon British subjects can be recognised without the sanction of the Queen.”]

§ 766. Besides this case of Captain Clerk there have been a good many cases in Hyderabad of the grant of titles by the Hyderabad cases. Abdul Hakk, 1882. Nizam to which exception has been taken by the British Government. The notorious Abdul Hakk is a British subject and was an Assistant Commissioner in the Berars. His services were lent to the Nizam's Government, and in 1882 the Nizam proposed to confer on him the title of Sardar Diler Jang Bahadur as a recognition of what he had done in connection with the capture of one Wasudeo Balwant and certain Rohillas. A reference was made to Sir Steuart Bayley, the Resident, and it did not occur to him that the fact of Abdul Hakk being a British subject was an objection to his receiving the title. Sir Steuart Bayley replied that the matter was one entirely for the Hyderabad Minister to decide, and thereupon the title was conferred without reference being made to the Government of India. The case, however, was noticed demi-officially<sup>16</sup> in these terms: “Abdul Hakk being a British subject the question should, according to rules, have been referred to the Government of India. His Excellency understands, however, that Sir Steuart Bayley was consulted and that he made no objection. Under these circumstances, no official notice will be taken of the matter. In accordance with precedent, however, the title cannot be officially recognised outside the Nizam's territory; and I am to request that in future the sanction of Government may always be asked in such cases.”

In 1884 the Nizam bestowed on Abdul Hakk the higher title of “Sardar Diler-ud-daula Bahadur.” This was done without the concurrence of the Government of India, and the Resident was directed to inform the Nizam that the title could not be officially recognised outside His Highness's territory. The Nizam pleaded oversight. Lord Ripon yielded and directed that the title should be recognised. “Abdul Hakk,” His Lordship said, “is a very useful officer of the Nizam's Government, and his services while in England have been acknowledged by the Secretary of State. It seems to me, therefore, that it would be ungracious and impolitic to refuse to recognise the title. *Each case of this kind ought to be settled on its own merits.*” It had been urged in the discussion of the case that the title was not one of a kind which we should confer, and though the title was recognised,<sup>17</sup> it was not gazetted as it was “not our title.”

In 1887 the Nizam conferred on Maulvi Mehdi Ali Khan, another British subject in the Hyderabad service, the title of “Mohsin-ul-Mulk” and applied for its recognition.<sup>18</sup> Several years before this, the Nizam without sanction had bestowed on the Maulvi the title of “Munir Nawaz Jang Bahadur.” In regard to the new title, the Resident was told that as the action of the Nizam's Government, in first granting it and then applying for its recognition, was a contravention of the orders on the subject, it could not be officially recognised outside His Highness's territory. The Nizam's request was, however, ultimately complied with on His Highness' expressing a hope that the error on his part would not be allowed in this instance to operate to the prejudice of the Maulvi.

<sup>15</sup> Pro., General A, December 1875, Nos. 9-11.  
<sup>16</sup> Pro., A Political G, December 1882, Nos. 4-5.  
<sup>17</sup> Pro., A Political I, August 1884, Nos. 43-45.

Pro., Internal A, October 1884, Nos. 243-245.  
<sup>18</sup> Pro., Internal A, September 1887, Nos. 39-42.  
 Pro., Internal A, January 1888, Nos. 173-179.

Early in 1891, the Resident noticed that the Nizam had conferred the titles of Imad-ud-Daula, Imad-ul-Mulk, and Vikar-ud-Daula, Vikar-ul-Mulk, upon Mushtak Husain and Saiyid Husain Bilgrami who were British subjects in the service of the Hyderabad State. The Resident therefore called attention<sup>19</sup> to the orders of Government which had been communicated to the Hyderabad authorities in 1884 and 1887, and pointed out that as the titles just conferred had not received the sanction of the Government of India, they could not be officially recognised outside the Nizam's dominions. The Resident reported this communication to the Government of India, by whom it was approved.

§ 767. A little later on, the Hyderabad Minister in a letter of November 11, 1891, reported that it was in contemplation to confer certain titles on five officials of the State, being British subjects, and enquired the wishes of Government. In four of these cases the double title was proposed of "Khan Bahadur and Jang." The Resident pointed out that it might be questioned whether it was desirable for the Government of India to recognise outside the Hyderabad State titles like "Nawab" and "Khan Bahadur," which are also conferred by His Excellency the Viceroy. The reply<sup>20</sup> was—"The Government of India do not consider it desirable that Rulers of Native States should confer titles similar to those which are ordinarily bestowed by His Excellency the Viceroy, as such a practice would be likely to lead to confusion." The suggestion was therefore made that if the Nizam still desired to distinguish the officials named "titles other than those usually conferred by His Excellency the Viceroy should be proposed for the sanction of the Government of India."

§ 768. As regards the authority of the Viceroy to grant titles to the subjects of Native States, the leading case is that of the Patiala Khalifas, 1883. In the negotiations which led to the Patiala, Jind and Nabha States joining in the Sirhind Canal project, Khalifa Saiyid Muhammad Hasan, Prime Minister, and Khalifa Saiyid Muhammad Husain, Foreign Minister, of the Patiala State, both of them Patiala subjects, gave great aid. In 1882, when the Sirhind Canal was about to be opened, Sir Charles Aitchison, then Punjab Lieutenant-Governor, proposed that the services of these two Khalifas should be recognised by the grant to them respectively of the titles *Wazir-ud-daula*, *Mudabbir-ul-Mulk* (Prime Minister of the State, Governor of the Country) and *Mushir-ud-daula*, *Mumtaz-ul-Mulk* (Councillor of the State, Chosen of the Country). In the discussion upon this proposal Mr. Charles Grant, the Foreign Secretary, noted—"The Viceroy might, I think, give to any Native of India any title, which had not a special significance in regard to the State of which the grantee was a subject. But could we reasonably confer on a Patiala subject a title conveying to the latter something wearing the appearance of official rank in Patiala? If there be any doubt on this point the wishes of the Council of Regency should be unofficially ascertained." After careful search many instances were found in which the Viceroy had conferred titles, such as "Rai Bahadur" and the like, on subjects of Native States, but no case in which he had so conferred a title similar in type to those proposed, that is, appearing to impart some official rank in the State. Mr. Durand, the Foreign Under-Secretary, said—"I do not think that the Viceroy could properly confer such a title without ascertaining that the State was willing to see it conferred. I was merely speaking in my note of the matter of abstract right. If the State had misbehaved, for instance, and the individual had behaved well, I think His Excellency could properly override any objection. But in such a case as the present it seems to me necessary, or at least very desirable, to make sure of the State's approval of the act." Meanwhile the Punjab authorities had ascertained that the Patiala Council would take no objection to the proposed distinctions, but would, on the contrary, regard the grant of them as an honour to

<sup>19</sup> Pro., Internal B, April 1891, Nos. 186-188.

<sup>20</sup> Pro., Secret I, April 1892, Nos. 44-54. For two more cases in which similar rulings were given, see Pro.,

Secret I, October 1894, Nos. 33-35, and Government of India, Foreign Department to Madras, No. 830, dated March 8, 1895.

the State. The titles were conferred<sup>1</sup> by *sanads* from the Viceroy and notification in the *Gazette of India*. It will be observed that the reason for consulting the Patiala Council in this case was that the proposed titles had a quasi-official meaning. Ordinarily, the matter being confidential, Political Officers do not consult the Rulers of Native States before proposing<sup>2</sup> titles for their subjects.

§ 769. When the Viceroy has granted a title by *sanad* to an inhabitant of a Native State, it is not settled by what authority the *sanad* should be delivered to the recipient of the honour. In 1837 the title of "Rai Bahadur" was conferred on Radha Kishan Kaul and Lala Ram Kishan, officials of the Kashmir State, in recognition of services rendered by them to the Kashgar and Gilgit Missions. Radha Kishan Kaul was a British subject. Of Ram Kishan it is said that he could hardly be called a British subject, though he was originally a resident of Lahore. The Maharaja expressed a wish that the *sanads* which granted the title to these two men, should be made over to him for bestowal on the recipients. Two precedents were found: a Punjab case and a Mysore case. In the former the Lieutenant-Governor proposed to deliver the *sanads* personally in Darbar to some Patiala officials; in the latter the Resident sent the *sanads* for delivery to the Dewan of the Mysore State. The Government of India agreed to gratify the wish of the Maharaja of Kashmir in the particular case; but in conveying this decision Sir Mortimer Durand, the Foreign Secretary, wrote<sup>3</sup> demi-officially: "There is no fixed rule on the subject, but I am not disposed to admit the right of any Native State to confer our honours, especially on British subjects."

Procedure in delivering grants of titles to inhabitants of Native States. Kashmir case, 1837.

If, however, the *sanad* is forwarded to the Darbar for delivery to the recipient, it is an act of great discourtesy to delay the transmission of the document. In January 1893, the title of "Rao Sahib" was conferred upon Lakshmilal Daulatrai, Darbar Vakil to the Baroda Residency, a British subject, who had been in the service of the Baroda State for twenty years. Five months later it appeared that the *sanad* had not been delivered to him. The Governor-General in Council learnt this "with extreme surprise and regret." "He trusts," wrote the Foreign Secretary,\* "that the delay which has occurred in forwarding the *sanad* may prove upon further inquiry to have been due to an oversight, but in the absence of sufficient explanation he cannot but regard the withholding it for so long as an act of great discourtesy to the representative of Her Majesty the Queen-Empress of India, and he desires that the Minister be so informed. The *sanad* should never have been taken by or sent to His Highness out of India, and if it is in India, it should now be immediately delivered to the Rao Sahib. If the original *sanad* is still with the Gaekwar, you should at once report the fact, when a duplicate *sanad* will be forwarded in order to avoid further delay.

A *sanad* conferring a title on a British subject serving a Native State must, if sent to the Darbar, be promptly delivered. Baroda case, 1893.

"His Excellency is reluctant to believe that the reason for the delay is, as stated by the Minister, that 'His Highness objects to honours being conferred on any of his employés without his being consulted.' The detention of the *sanad* for a reason of this kind would be wholly inconsistent with the Gaekwar's position as one of the Native Chiefs under the suzerainty of Her Majesty the Queen, and with his duty to the British Government. It would be specially inexcusable in a case like the present, when the recipient of the honour is a British subject.

"The incident under notice affords a fresh example of the inconvenience arising from the Gaekwar's frequent absence from Baroda."

The *sanad* was then at once delivered to the Rao Sahib by the Minister and the Gaekwar expressed regret for the delay.

<sup>1</sup> Pro. A, Political G., February 1833, Nos. 27-34.

<sup>2</sup> Demi-official from Foreign Department, to Punjab Secretary, dated December 2, 1890.

<sup>3</sup> Pro., Frontier B, May 1837, Nos. 147-148.

\* Pro., Secret I., February 1894, Nos. 61-67.

§ 770. We have been dealing rather slightly and generally with the history of the grant of titles in India and in more detail with the powers in this behalf of

Summary.

Ruling Chiefs and British Indian authorities. In summarising the chief points elicited in connection with these matters, it seems proper to remark that the leniency with which the Government of India has condoned the errors of the Nizam might not be shown again on other occasions. As usual, we have set down the precedents for consideration, but on comparing one with another it seems probable that the case of Muhammad Faiz Ali Khan (paragraph § 763) is really a much better precedent, that is to say, in better accord with accepted principles and the general system of relations with Native States, than the cases of Abdul Hakk or Maulvi Mehdi Ali Khan (paragraph § 766). But the best further comment which we have to offer in this connection is contained in the first of the conclusions which may here be recapitulated :—

(1) *In the grant of titles in India care should be taken to avoid too much system. Much is left to the unfettered discretion of the Representative of the Queen.*

(2) *It is highly important that the value of titles granted in India by the British Government should not be lowered by the bestowal of them on unworthy recipients or on recipients who will appear unworthy in the eyes of the Native community.*

(3) *Titles granted in India by the British Government are not, as a rule, hereditary, nor should hereditary titles be granted in India except in very special cases.*

(4) *The power to grant titles in India to Ruling Chiefs and, except as implied below, to Native British subjects rests exclusively with the Viceroy as representing the Queen-Empress.*

(5) *Titles may be granted by Ruling Chiefs to their own subjects, so long as they are granted with discretion.*

(6) *[Titles conferred by the Rulers of Native States on European British subjects without the previous sanction of the Queen cannot be recognised.]*

(7) *Ruling Chiefs may not confer titles upon Native British subjects without the consent of the Government of India; and should not grant to Native British subjects in their service, titles the same as those which are usually conferred by the Viceroy.*

(8) *If a Ruling Chief desires that a Native British subject in his service should receive a title, it may be best that the title should be conferred by the Viceroy at the request of the Chief.*

(9) *The Viceroy has full authority to grant Indian titles to the subjects of Native States, and it is not ordinarily the practice to consult the Rulers of States before proposing titles for their subjects. But if an Indian title proposed for the subject of a Native State would convey to him any apparent official rank in that State, it would be expedient, as a matter of courtesy, to consult the Chief of that State before granting the title.*

(10) *There is no fixed procedure for the delivery to the inhabitant of a Native State of a sanad from the Viceroy granting him a title. But apparently no Ruling Chief could claim as of right to deliver such a sanad, at any rate to a British subject; and a sanad conferring a title on a British subject in the service of a Native State, must, if sent to the Darbar, be delivered with promptitude.*

(11) *A title granted without sanction by a Ruling Chief to a Native British subject will not ordinarily be recognised outside the limits of the State; but when Ruling Chiefs have granted or propose to grant titles to Native British subjects, the question of recognition will, in each case, be considered on its merits.*

In this summary we have used the words "Native British subject," as we have used them elsewhere, to denote Native Indian subjects of Her Majesty. <sup>4</sup> And we have employed the expressions "titles granted in India" and the like,

<sup>4</sup> See Code of Criminal Procedure, section 188.

to distinguish the titles of which we are speaking from titles granted by Her Majesty the Queen, such as the titles of Knights and Peers.

§ 771. We have already said that we do not intend to enter on any question connected with British Orders of Knighthood, but we may note that it is very well established that no Ruling Chief may create an Order on the English model. On

Ruling Chiefs may not institute Orders of distinction.

The proposed revival of the Order of the Ali Band, Hyderabad, 1885.

May 25, 1885, the Resident at Hyderabad telegraphed to say that a report had reached him that the Nizam at Ootacamund had instituted a new Order and that so far he had invested no one but himself. In so doing the Nizam had failed to await a reply to a reference made to the Resident on the subject. In the course of the correspondence which followed, the Minister, Sir Salar Jung, alleged that the Order in question was an ancient one, the Ali Band, which used to be conferred by the Nizams on their nobles, and of which the decoration used to be worn by the Nizams. It appeared, however, that the Order had a new name, the Asafia, and was to be instituted in three degrees on the English model of modern date. The orders of the Viceroy, Lord Dufferin, were conveyed to the Resident in these terms<sup>5</sup> :—

“The Minister, in the letter enclosed by you, surmises that a misunderstanding has arisen from the proposal to change the name of the Ali Band, and to make it an Order having three grades. He observes that the Order is not a new one, and that there was no intention of conferring it upon any persons other than Hyderabad subjects. Under these circumstances, he says, His Highness the Nizam cannot imagine that it is the intention of the Viceroy to deprive him of a prerogative which has belonged to his family for nearly three centuries. But the letter ends with an assurance that if the change in the name of the Order, and the proposed introduction of the three grades, have led to the present misunderstanding ‘His Highness will be most happy to abandon his intention of re-naming the Order, allowing it to retain its old name, and continuing to confer it according to the old rules.’

“The Minister further explains that the Nizam had no intention of acting in anticipation of sanction after consulting the Government of India, and remarks that such a step would have been not only unusual but also inconsistent with the laws of humanity and the relations existing between the Nizam’s Government and the Paramount Power.

“It is not necessary to examine too closely the Minister’s arguments or to decide precisely how far they are consistent with his earlier letters on the subject. The Order of the Asafia, with its three grades, and its general distribution, would have been an altogether different thing from the hereditary decoration of the Ali Band, and this is now evidently recognised both by the Minister and the Nizam, who is prepared, as I understand it, to let the matter drop. His Excellency the Viceroy thinks this is the best solution of the difficulty, and he wishes you to let the Nizam know his opinion.

“You should, therefore, inform the Minister that his letter has been seen by His Excellency, and that there is no objection whatever on the part of the Government of India to the Nizam’s wearing any decoration which has been ordinarily worn by his ancestors. But so far as His Excellency is aware, it has never been the custom in any Native State for the Chief to confer decorations of this kind on others; and in Hyderabad itself it appears to be clear that there was, at all events, no public and formal bestowal. That is to say, that, in the English sense of the word, there was no Order of the Ali Band. In His Excellency’s opinion the matter had better remain upon this footing. It is not desirable that a precedent should be created for the distribution of decorations by other Native Chiefs, and the Viceroy is not prepared to refer to Her Majesty on the subject. His Highness the Nizam may rest assured that the Viceroy has no wish to interfere with His Highness’s prerogatives, but he thinks that in this case any new departure would on the whole be inexpedient. His Excellency is confident that, on reflection, the Nizam will recognise the justice of this view.”

The explanation of the Nizam in regard to his having anticipated the sanction of the Government of India was accepted.



§ 772. In 1891, it came to the notice of the Government of India that a draft proclamation had been prepared by the Mysore authorities whereby the Maharaja of Mysore proposed to create an Order of distinction to be named "The Order of Gandabherunda of Mysore." There were to be three classes, and the badge of the first and second classes was to be a medal and of the third class a bangle. Rules were laid down as to investiture, the wearing of the badges, the precedence of the members of the Order and on other similar points. The Government of India telegraphed<sup>6</sup> to the Resident on October 5, 1891—"Please inform the Dewan that the Government of India cannot approve of the proposed Order of distinction. A very similar proposal came up from Hyderabad in 1885, and was rejected. *The Native States should adhere to their own customs in these matters and not attempt to found Orders based upon English models.* You can doubtless make the Dewan understand this without hurting the Maharaja's feelings."

As a summary here it will suffice to say that *no Buling Chief of a Protected Indian State will be permitted to institute an Order of distinction.*

§ 773. Having touched upon the history of the grant of titles in India and upon the powers of certain authorities in connection with them we have now to consider some cases relating more particularly to titles of different kinds. And first we have in this place something more to say on the question of hereditary titles. As already implied, hereditary titles have been very sparingly granted

Hereditary titles granted by the British Government, but we may mention a few instances of the grant of

these titles, especially because in some cases conditions have been annexed which may deserve consideration on future occasions. In July 1875 the hereditary title of Nawab was conferred<sup>7</sup> by notification in the *Gazette of India* and *sanad* on Nawab Faujdar Khan, C.S.I., and Nawab Ghulam Hasan Khan, C.S.I. The *sanad* in each case stated—"The title is conferred on the following conditions: (1) That you and your lineal heirs male, who may hereafter succeed to the title, will be loyal to the British Government. (2) That you and the said heirs will perform service when required by the British Government. (3) That a *nazarana* shall be paid on each succession, the amount to be fixed by His Honour the Lieutenant-Governor of the Punjab for the time being. (4) That each successor to the title shall be selected from among your lineal male heirs by the British Government." Faujdar Khan and Ghulam Hasan Khan were British subjects, Alizais of the class known as Multani Pathans, and both had been granted the title of Nawab for life by the British Government. Each did excellent service in the Multan campaign of 1849. At the time of the Mutiny Nawab Faujdar Khan was British Agent at Kabul, in which capacity Ghulam Hasan Khan succeeded him in 1859. In 1857 Ghulam Hasan Khan enlisted between one and two thousand men for himself and other leaders and served as Native Commandant of Cureton's Multani Horse. Both of these distinguished men performed various other services and received other rewards which need not be particularised. Three hereditary titles were conferred at the time of the Delhi Assemblage<sup>8</sup>; the title of Maharaja Bahadur, on Sir Jai Mangal Singh Bahadur, K.C.S.I., of Gidhaur, Monghyr; of Raja (to be attached to the Chiefship) on Dharmjit Singh Deo, Chief of Udaipur in Chota Nagpur; and of Nawab on Abdul Ghani of Dacca. These titles were notified in the *Gazette* Extraordinary of January 1, 1877, and the form of *sanad* communicated to the Bengal Government was thus worded:—"In recognition of your loyal conduct and services, I hereby direct that the title of—conferred upon you by the Viceroy and Governor-General of India by *sanad* dated the—shall, on your decease, descend to, and be held by, your eldest legitimate male representative for the time being, unless and until the Government of India otherwise directs." No conditions were inserted in the *sanad* and notification of August 28, 1884, declaring a title of Sir Dinkar Rao to be hereditary.<sup>9</sup> The title was "Raja Mushir-i-Khas Bahadur" and had been conferred on him as a personal distinction on January 1, 1877. But in November of the same year<sup>10</sup> a *sanad* granted by the Viceroy, Lord Ripon, to Maharaja

<sup>6</sup> Pro., Secret I, October 1891, Nos. 3-7.

<sup>7</sup> Pro., Political A, July 1875, Nos. 262-278.

<sup>8</sup> Pro., Political A, December 1877, Nos. 322 and 586.

<sup>9</sup> Pro., Internal A, September 1884, Nos. 208-226.

<sup>10</sup> Pro., Internal A, November 1884, Nos. 178-181.

Rajkrishna of Susang, Mymensingh, ran thus—"I hereby declare that the title of 'Maharaja' conferred upon you as a personal distinction in 1877, will for the future be regarded as hereditary, provided that your family remains loyal to the Crown and constant in its endeavour to deserve the approval of the British Government." The Maharaja of Susang is a Bengal *Zamindar*, not a Ruling Chief. An exactly similar *sanad* was granted by Lord Lansdowne on January 1, 1891, to Maharaja Sir Jotindra Mohan Tagor of Calcutta. In communicating this *sanad* and the accompanying *Gazette* notification to the Bengal Government, the Officiating Foreign Secretary wrote—"I am to take this opportunity of expressing His Excellency the Viceroy's desire that the utmost circumspection may be used in submitting recommendations for hereditary titles. It has been ruled for many years, with the concurrence of Her Majesty's Secretary of State, that it is not desirable, save in very exceptional cases, to confer hereditary titles in India, where the decadence of families is sudden and frequent, and where primogeniture is not the established custom." Sir Jotindra Mohan Tagor also is not a Ruling Chief.

§ 774. The hereditary titles of Ruling Chiefs are invariably recognised as a matter of practice and in the case of ordinary British subjects many hereditary titles are in common use without any express recognition or grant by the British Government. Such are the titles of many of the Mirs in Sindh, Sardars in the Punjab, and Thákurs in the Central Provinces, of Rajas and Nawabs and of many Raos and some Rais in various parts of the country. This will be clearly seen from an examination of an alphabetical list of title-holders in India other than Ruling Chiefs, which was prepared<sup>11</sup> in the Foreign Office in 1890. The list contains about 539 hereditary titles not expressly recognised or granted by the British Government; of these 102 are titles of Mir in Sindh, 135 of Sardar in the Punjab, 43 of Thákur in the Central Provinces, 87 of Raja in Bengal, Bombay, the Central Provinces, Madras, the North-Western Provinces, Oudh and the Punjab, 13 of Nawab in the Punjab, Baluchistan, Bombay, and the Central and North-Western Provinces, 12 of Rai in the Punjab and North-West, and 67 of Rao, Rao Sahib or Rao Bahadur in the same Provinces and in the Central Provinces and Bombay.

§ 775. On many occasions, however, the Government of India have by letter *Express recognition of hereditary titles held by usage.* or *Gazette notification expressly recognised hereditary titles held as such by usage.* Thus in December 1877 the titles of some sixty *talukdars* and other inhabitants of Oudh were recognised by notification, some for life and others as hereditary, each case having been investigated<sup>12</sup> by the local authorities. Amongst the hereditary titles there were two of Chaudhri, one of Rai, one of Khan Bahadur, and one of Dewan, the rest of the titles in this category being those of Raja, Nawab, Rana and Mirza.

In 1884, when the case of the Maharaja of Susang was under consideration, the Government of India also inquired into the claims of the Chanchra and Naldanga families, likewise *Zamindars* of Bengal, to the hereditary title of Raja. The founder of the Chanchra family is said to have received under the Muhammadan Government, in 1582, five *parganas* as a reward for military service. Raja Barada Kant Rai succeeded to the *Zamindari* in 1817, and in 1858

the Government of Bengal, apparently supposing that he was already entitled to be called Raja, asked the Government of India to confer upon him the higher title of Raja Bahadur. They complied with this request, but said nothing to show that the title was conferred as an hereditary distinction. In 1883, when the Bengal Government reported on the claim of Kumar Gyanada Kant Rai, the son of Raja Barada Kant Rai, then deceased, to the title of Raja, they argued that he had no claim as of right to succeed to it, though several of the ancestors of the late Raja had been addressed as Rajas by officers of the British Government. The personal character of the Kumar and his conduct as a *Zamindar* were bad.

<sup>11</sup> Pro., Internal A, September 1890, Nos. 21-22.

<sup>12</sup> Pro., Political, February 1878, Nos. 93-101.

§ 776. The Naldanga family claims to represent one of the three families amongst which the District of Jessore was divided during the period of Muhammadan supremacy, and members of the family are said to have borne the title of Raja. In 1860 the *Zamindar* was Indubhusan Deb Rai, and the Bengal Government, without making a distinct recommendation to this effect, suggested that long enjoyment of the title of Raja, even in default of formal recognition by Government and personal qualifications, might be considered by the Governor-General in Council to constitute a claim to favourable consideration. Lord Canning noted that he had no hesitation in conceding the claim because Indubhusan Deb Rai and his putative or adoptive father had been called Raja for more than thirty years. But a decision on the question of the right of heirs to succeed to titles not created by the British Government was then avoided, and the title of Raja was simply conferred on Indubhusan Deb Rai. The Government of India, however, took occasion to point out that an order of the former Lieutenant-Governor prohibiting the recognition of the title should not have been passed without the authority of the Governor-General in Council. In 1883, in the case of his son, Kumar Pramadabhusan Deb Rai, the question was in abeyance, the Kumar having been told that the request for the title of Raja would be taken into consideration, if he gave satisfaction in the discharge of the duties of his position.

§ 777. In neither of these cases did the Government of India reject the view of the Local Government that the title should not be recognised as hereditary; but they declined to make any formal announcement in this sense and directed that when the conduct of the claimants was satisfactory, their cases should be re-submitted. In 1884 Mr. Rivers Thompson, the Lieutenant-Governor, urged that a definite reply should be made to the undecided question whether we should recognise the right of heirs to succeed to titles not created by the British Government, but found to be in existence at the time of the establishment of British authority in India. Sufficient materials, it was considered, did not exist for a general decision. "The circumstances of such cases," said the Government of India, "differ widely in

Decision in the Chanchra and Naldanga cases.

different parts of India and the meaning of the words 'found to be in existence' is capable of being understood in different ways." For instance, Mr. Westland had stated in his history of Jessore that the title of Raja which the Chanchra family had assumed, meant nothing and did not indicate any nobility of origin. Every great *Zamindar*, he said, "assumed the title of Raja, and in the early correspondence of the district, the heads of the families of Jessore, Naldanga, and Nattor are sometimes termed Rajas and sometimes not. Their own petitions and representations as often omit as insert the appellation." Quoting these remarks, the Government of India continued—"Evidently it would not be easy to say whether in such cases the titles were or were not found to be in existence when British authority was established; and it would therefore be difficult, if not impossible, to devise a general rule applying to all the so-called Rajas of Lower Bengal alone. *The only principle which can be definitely laid down is that the Government of India are not prepared to reject without full inquiry a reasonable claim on the part of a Native family to a hereditary title.* It is doubtful whether under Native Governments titles were, strictly speaking, hereditary, and in 1829 the Government of India expressed the opinion that they should not be so considered; but since that time hereditary titles have been given and recognised by the British Government; and in certain cases it may be desirable that they should be recognised or conferred in future. *The decision in any particular case must depend upon the special circumstances.*"

With regard to the case of Indubhusan Deb Rai and his son, the Government of India pointed out that the *sanad* of 1860 did not expressly confer the title as a personal distinction. No words were used upon which the family could found a claim to the title in perpetuity; but the course adopted did not decide that the title was not hereditary. On the contrary there was some

ground to infer that Lord Canning did not intend to limit his grant to Indubhusan Deb Rai personally.<sup>13</sup>

§ 778. As to the *Zamindar* of Susang,<sup>14</sup> who, as we have seen (*vide* paragraph § 773), obtained the hereditary title of Maharaja, the report of the Bengal Government was that he was the representative of a long line of powerful and once independent chieftains, himself retaining in the eyes of the wild people of the border much of the influence and some of the position of his ancestors: while the heads of the Chanchra and Naldanga families were "*Zamindars* of good birth and rank but with no claim to the position enjoyed by the Maharaja of Susang independent of any title conferred on him by Government."

Decision in the Susang Case.

§ 779. In 1889 the Madras Government forwarded a draft order dealing with the claims of certain *Zamindars* and others in the Madras Presidency to bear titles which had neither been conferred nor formally recognised by the British Government. As this order in several instances proposed to recognise the titles claimed, the Government of India observed "that the power to bestow or confirm titular distinctions in India rests exclusively with the Viceroy and Governor-General as the immediate representative of Her Majesty the Queen-Empress of India, and that it is desirable that His Excellency should in all cases exercise this power directly." A complete list with full information was called for. Amongst the cases considered were those of persons holding titles of honour by grant from the late titular Nawabs of the Carnatic. When Dr. Balfour (*vide* paragraph § 760 above) called attention in 1858 to the grant of titles by the Nawabs of the Carnatic he mentioned<sup>15</sup> that since July 1801, the Nawabs had distributed 890 titles amongst 704 persons. The titles were not cancelled by the Government of India, but in a letter of September 3, 1858, they observed<sup>16</sup> that "titular Princes, such as the late Nawab of the Carnatic, or the Nawab Nazim of Bengal, should not be allowed to continue the practice of bestowing titles." The orders passed in 1889 on the claims to these Carnatic titles were thus framed:—"Although the Government of India does not as a rule interfere with the grant of Native titles by Ruling Chiefs to their own subjects, it does not recognise titles so derived, and *a fortiori* it would not ordinarily recognise titles granted by merely titular Chiefs. The Carnatic titles under consideration are, however, said to have been held for many years past, and it is shown that similar titles are being improperly assumed by members of the Carnatic family and their connections who have no claim to them. The Government of India will therefore sanction, as a measure of protection to the general public, the publication in the *Gazette of India* of a list of those persons upon whom titles were actually conferred by the late titular Nawabs. These titles will be recognised as purely courtesy titles during the lives of the present holders only; and the claims should be included in an appendix to the general list now called for."

A notification of December 16, 1890, recognised in favour of Madras *Zamindars*, the title of Raja as hereditary in seventeen cases and of Mani Sultan in one case. It also recognised for life forty titles of relatives and dependants of the late Nawabs of the Carnatic. Of these forty titles, twenty-three were titles of Khan Bahadur, Khan, Rai Bahadur or Rai.

§ 780. In the course of the correspondence the Government of Madras proposed that in cases such as that of the Maharaja of Vizianagram the minor titles should be used only on the rare occasions when it is customary to recite the full style and titles of a person in a formal State document, and should be omitted from ordinary *Gazette* notifications or communications addressed to the Maharaja by the British authorities. The Government of India admitted that this practice would be more convenient, but

<sup>13</sup> Pro., A Political I, August 1884, Nos. 211-214. See also Foreign Proceedings, July 1860, Nos. 274-277. In these papers the name of the *Zamindar* appears as Indubhusan Deb Rai. In the papers of 1884 it is Jadubhusan Rai.

<sup>14</sup> Pro., Internal A, November 1884, Nos. 178-181.  
<sup>15</sup> Selected papers relating to the grant of titles and honorary distinctions, Part I, pages 2 and 4.

stated that they had hitherto employed the full style and titles in addressing even titular Chiefs.<sup>16</sup> The point was not expressly mentioned in the particular case, but it is the well established practice of the Government of India to use the full style and titles when addressing Ruling Chiefs.

§ 781. There is, of course, a clear distinction between recognising titles conferred by predecessors of the British Government and conferring hereditary

titles at the present time. When the British Government decides to confer a hereditary title, it is probable that the

choice will be confined to the higher titles of Maharaja, Raja, Nawab and the like, and that lower titles, such as Rai Bahadur, Khan Bahadur, Rai and so forth, will be granted merely as personal distinctions. This is an inference from the case<sup>17</sup> of Seths Gokul Das and Ballabh Das, bankers of Jabalpur, 1883. These Seths were partners in a wealthy firm and lent the Jabalpur Municipal Committee five and-a-half lakhs of rupees on very favourable conditions to enable the Committee to construct the Jabalpur water-works. Mr. Morris, the Chief Commissioner of the Central Provinces, proposed that this liberality should be recognised by the grant to each partner of the title of Rai Bahadur as a hereditary distinction. Mr. Mortimer Durand noted—"I can see no objection to giving a Rai Bahaduri to both these gentlemen, but I would not make the honour hereditary. We have apparently no precedent for such a course, and the title seems to me too low to continue as a hereditary distinction. It would be tantamount to making hereditary C. B.'s or C.S.I.'s. The family of the recipient would not ordinarily be such that it could fitly possess a title in permanence. The Seths' descendants, two or three generations hence, may be paupers, and they do not presumably belong to one of the old country families. I would make nothing hereditary below the rank of Raja or Nawab, and would not often do it with these. We can easily answer that there is no precedent for the course recommended." The Government of India did not give any official expression to these views, but on receipt of a modified recommendation from the Chief Commissioner the title of Rai Bahadur was simply conferred on each of the Seths as a personal distinction.

§ 782. The title, however, of Khan Bahadur was not conferred but recognised as a hereditary distinction in case of Raja Amir Hasan, Talukdar of Mahmudabad in the Sitapur District of Oudh. In May 1885 this title was

conferred upon the Raja as a personal distinction. It appeared, however, that the title had been granted to his ancestors by one of the Delhi Emperors; and in 1884, Sir Alfred Lyall, as Lieutenant-Governor and Chief Commissioner, having regard to the influence and position of the Raja and the share he had taken in the deliberations on the Oudh rent question, recommended that the hereditary character of the title should be recognised. It was noted that the British Government had never conferred the title of Khan Bahadur as a hereditary distinction, but had occasionally recognised it as such when, as in this case, it had been enjoyed before British rule. The title was recognised accordingly by notification in the *Gazette*.<sup>18</sup>

§ 783. The Government of India have long borne in mind the obvious principle that it is ordinarily inexpedient to grant hereditary titles unless it is probable that the descendants of the persons honoured will have the means of supporting the dignity. When the hereditary title of Maharaja was granted to

Sir Jotindra Mohan Tagor (see paragraph 1890-1894. § 773 above) the Government of India

agreed that if the course were found to be legally practicable the Maharaja might "make for the term of a life or lives in being at his death, and for a further period of 21 years, a settlement of property sufficient to maintain the dignity of the title." In proposing this arrangement the Maharaja had expressed preference for legislation on the lines of the Bombay Baronetcy Acts and had further suggested that a privilege granted to Oudh Talukdars should be extended to Bengal holders of hereditary titles. Act XX of 1860 enabled certain official trustees as a Corporation to hold promissory notes and to pay

<sup>16</sup> Pro. Internal A, August 1889, Nos. 234-253.  
Pro. Internal A, December 1890, Nos. 227-234.

<sup>17</sup> Pro. A, Political G., February 1883, Nos. 48-53.  
<sup>18</sup> Pro. B, Political L., March 1884, No. 10.

the annual income therefrom to the successors of the late Sir Jamsetji Jijibhai in his baronetcy. A very similar Act, No. VI, was passed in 1893, in the case of Sir Dinsha Petit. Section 8 of the Oudh Talukdars' Act, No. I of 1869, provides for the preparation of lists of Talukdars the succession to whose estates shall be regulated by the rule of primogeniture.

§ 784. The Government of India in March 1891 declined to undertake special legislation. But in April and October 1892 the Bengal Government reported that the Maharaja could not, in the present state of the law, settle property as suggested; that the Nawabs of Dacca (upon one of whom a hereditary title has been conferred) had been endeavouring by the establishment of *wakfs* or trusts to concentrate the wealth of the family in the hands of its leading representative for the time being; and that the Calcutta High Court had decided in August 1892 that a *wakf* endowment settling property upon the members of a man's family in succession does not constitute a legal trust under Muhammadan Law. The question of legislation was then reconsidered,<sup>19</sup> and after consulting Local Governments and Administrations a draft Bill to authorise certain persons possessing titles granted as a hereditary distinction to settle in perpetuity, with the sanction and approval of Government, on themselves and their successors, property sufficient for the maintenance of the dignity of their titles, was submitted to the Secretary of State<sup>20</sup> for consideration. Her Majesty's Government, however, for reasons given in Despatch No. 8 (Legl.), dated April 26, 1894, refused to sanction the Bill, and the proposals for a general law dealing with the subject were accordingly dropped.

§ 785. It may be worth while to add here, though the point is obvious, that the grant of a hereditary title must be made in express terms. Raja Bahadur Surat Singh of Taluka Jinjhira in the Narsingpur district of the Central Provinces did good service in the Mutiny, and a *sanad* was granted to him by the Governor-General on July 18, 1858, which contained these words—"The titles of Raja and Bahadur, together with a *khilat*, have therefore now graciously been conferred, and this *sanad* is granted to you."—There was no reference in the *sanad* to any hereditary title. When Surat Singh died in November 1871, the Chief Commissioner referred the general question whether such titles as Raja Bahadur are or are not hereditary when conferred on large landholders. The Government of India replied<sup>1</sup> that "titles conferred on landholders and others are not hereditary unless this be distinctly stated in the *sanad*."

#### Summary.

§ 756. What we have said on the subject of hereditary titles may be summed up in these terms:

(1) *When a hereditary title is granted, it is for consideration whether the sanad should express a condition of loyalty to the Crown, or any other conditions.*

(2) *Many hereditary titles are in common use which have not been conferred or expressly recognised by the British Government.*

(3) *The Government of India have often expressly recognised hereditary titles customarily enjoyed without any grant by the British Government.*

(4) *The Government of India will not reject without full inquiry a reasonable claim on the part of a Native family to an hereditary title, but the decision in each case will depend upon the special circumstances.*

(5) *The Government of India do not ordinarily recognise titles granted by titular Chiefs.*

<sup>19</sup> Pro., Secret I., May 1890, Nos. 94-95.

" February 1891, Nos. 39-41.

" April 1891, Nos. 14-15.

From Bengal, No. 1503-P., dated April 20, 1892.

From Bengal, No. 743-P.D., dated October 23, 1892.

Home Department Circular to all Local Governments and

Administrations, No. 7-Judicial—383-391, dated April 3, 1893.

<sup>20</sup> Home Department Despatches No. 18 (Judicial), dated April 5, 1893, and No. 5 (Judicial), dated January 26, 1894.

<sup>1</sup> Pro., Political A., September 1871, Nos. 146-148.

(6) *In addressing Ruling and titular Chiefs their full style and title should be used.*

(7) *Titles lower than Raja and Nawab are not ordinarily granted as hereditary distinctions; but a lower title enjoyed before British rule may be recognised as hereditary.*

(8) *A title conferred by the British Government is not hereditary unless it is expressly stated to be so in the document making the grant.*

§ 787. Leaving now the general case of hereditary titles, we may mention

The title of Prince. some rulings about specific titles, such as "Prince," "Shahzada," "Kunwar," "His Highness," "His Excellency," and the like. The title of Prince has never been formally conferred or formally recognised in the case of any Native of India, with the exception of Nawab Azim Jah of Arcot, to whom it was granted by Letters Patent of 1870 under Her Majesty's sign manual,<sup>2</sup> with succession to his four sons and one of his grandsons. In a minute of December 1, 1866, Lord Napier of Merchistoun,<sup>3</sup> Governor of Madras, explained that in proposing the title of Prince, his "desire was to make the official designation of the head of the Carnatic family as new and as English as possible, to mark that the title emanated from the Queen in the most conspicuous manner, and that the head of the family had frankly accepted a new status from our sovereign as 'first nobleman of the Carnatic.'"

§ 788. In 1882 Mirza Jahan Kadr, a nephew and son-in-law of the King of Oudh, claimed the title of Prince, by allowed merely as a courtesy title. which he had sometimes been addressed. The Bengal Government in submitting his application said they had no objection to the title being recognised. The Government of India settled with the Lieutenant-Governor that no official answer should be made and that the subject should drop, with the understanding that the title should not be officially conferred on the Mirza but that he might continue to enjoy it as a courtesy title.<sup>4</sup> Similarly after the death of the King of Oudh, when the Agent to the Governor-General for the King's affairs proposed in 1888 the title of Shahzada for the eldest son of the late King and of Mirza Bahadur for the younger sons, the Government of India replied that it was not considered desirable that a formal title should be conferred on any of the sons, but that there was no objection to their being addressed by the title of Prince.<sup>5</sup>

§ 789. In 1853 a question arose as to the title of Shahzada in the family of Shah Zaman, the ex-King of Kabul. The Government of Lord Dalhousie ruled that this title was not to be recognised "in favour of any of the descendants of the ex-King except his sons," because "the maintenance of the distinctive appellation" had proved "on other occasions to be exceedingly inconvenient."

The Punjab authorities held that these orders were applicable also to the family of Shah Shuja, but failed to give proper effect to them. It appears that Mr. Barnes, when Commissioner of the cis-Sutlej States, made two very large exceptions to the rule laid down by the Government of India; for he instructed the Deputy Commissioner of Ludhiana (where most of the Saddozai pensioners still reside) that the title might be continued to the heads of the two families from generation to generation and for their lives to members of the two families already in practice addressed by the title from the Court of the Deputy Commissioner. Sir Herbert Edwardes subsequently reported the state of the case and was informed by the Punjab Government that the orders of the Supreme Government must be strictly carried out. Under the circumstances the title was discontinued in the case of Sultan Sikandar, a son of Shahzada Sultan Taimur Shah and grandson of Shah Shuja. After calling for a report the Government of India declined to interfere.<sup>6</sup>

§ 790. In 1859 Prince Ghulam Muhammad, K.C.S.I., a son of Tipu Sultan of Mysore, solicited<sup>7</sup> the title of Shahzada for the grandsons of Tipu. In a despatch of June 11, 1860, the Secretary of State announced that Her Majesty had

<sup>2</sup> Pro., Political A., November 1870, Nos. 67-68.

<sup>3</sup> Pro., Political A., February 1867, Nos. 184-191.

<sup>4</sup> Pro. A., Political I., May 1883, Nos. 134-140.

<sup>5</sup> Pro., Internal A., July 1898, Nos. 353-354

<sup>6</sup> Pro., Political A., November 1864, Nos. 263-268.

<sup>7</sup> Foreign Consultations, December 30, 1859, No. 337.

“been graciously pleased to respond favourably to the appeal of Prince Ghulam Muhammad and to command their recognition as Shahzadas.” The Bengal Government in December 1880 proposed that the title of Shahzada should be conferred on Muhammad Farrukh Shah, the grandson of Prince Ghulam Muhammad, as a special concession, not to form a precedent, but to be granted in consideration of his public spirit and good conduct. The Government of India<sup>9</sup> conferred the title by *sanad* and notification in the *Gazette* but said in so doing—“It is probably unnecessary for the Government of India to point out the objections which exist under ordinary circumstances to the grant of this title which has a distinctly political meaning, and tends to perpetuate the recollection among the Mysore family of a state of things long since passed away. In the interests of the family itself, it is very desirable that all distinctions based on royal descent should finally disappear, and that the descendants of Tipu Sultan should learn without further delay to accept their altered position.

“Nevertheless, as a very special case, and on the understanding that no precedent is created for the future the Governor-General in Council consents to accept the recommendation of His Honour the Lieutenant-Governor in this instance.”

The notification and *sanad* conferred the title as a personal distinction and the letter said that the concession was made “in consideration of the Sahibzada’s public spirit and high character.”

When the Bengal Government in June 1890 proposed that the title of Shahzada should be formally conferred on Sahibzada Muhammad Bakhtiyar Shah, also a great-grandson of Tipu Sultan in the direct male line, the Government of India referred them to the above orders which were passed on May 18, 1881, and requested that if the Lieutenant-Governor considered this Sahibzada worthy of recommendation for any distinction, he would propose some other title than that of Shahzada.

The inference from these cases is that *the perpetuation of royal titles in India is undesirable.*

§ 791. In 1877 the Bengal Government referred the question whether the second son of a titular Maharaja was entitled to be styled “Kunwar.” This designation and its equivalent “Kumar” are in ordinary use for the son of a Raja or a Maharaja. After an examination of precedents the Government of India replied<sup>9</sup> that the younger sons of titular Maharajas are not entitled to the designation of “Kunwar,” though in one or two instances the title has been granted as a special case. There is, they added, no objection to the younger sons of a titular Maharaja being designated Mians.

§ 792. In 1873 the Secretary of State called attention to the fact that the title of ‘His Excellency’ was applied to the Dewan of Palanpur, and asked whether one more suitable to the circumstances of the case might not be given. The Bombay Government mentioned in reply that the title was also applied to the Chiefs of Radhanpur, Cambay and Janjira, and they proposed to retain the title during the lives of existing holders, but to direct that their successors should be called Nawab. They also proposed the withdrawal of the title of His Highness from the Savanur and Akalkot Chiefs and the successors of the Sindh Amirs except the Mir of Khairpur. The Government of India on March 20, 1874, concurred; and the Secretary of State approved on June 25 in the same year.<sup>10</sup> In September 1883 the Government of India ruled that the title of His Excellency then enjoyed by the Raja of Pudukota was personal to him and expressed the opinion that it should not be continued to his successor. The Madras Government in reply showed that the title of His Excellency had been approved for the Raja of Pudukota by Lord William Bentinck as Governor-General and by the Court of Directors. About this time a salute of eleven guns was conferred on the Raja and his successors as an hereditary distinction. In intimating to the Government of Madras the grant of this salute the Government of India said that there were weighty objections to the continuance of the title

<sup>9</sup> Pro., Political B, May 1881, Nos. 250-254.  
<sup>9</sup> Pro., Political B, May 1877, Nos. 49-50.

<sup>10</sup> Pro., General A, March 1874, No. 21, and July 1874, No. 41.



of His Excellency which was formerly enjoyed by the Raja, and forwarded the correspondence of 1874, just mentioned, regarding the withdrawal of a similar title from certain Chiefs in the Bombay Presidency. In consideration, however, of the fact that the Raja is a Ruling Chief who enjoys a salute of more than ten guns, it was decided that he might be addressed as His Highness.<sup>11</sup>

This decision was in accordance with a rule sanctioned by the Viceroy, Lord Ripon, in connection with this Pudukota case, but not communicated to chief political authorities generally for several years. In 1887, it was observed that two Chiefs in Central India, who did not appear to be entitled to the designation, had been styled Their Highnesses. The ten-gun rule of 1884 was not known at Indore and in May 1888 all chief political authorities were consulted on the question whether the title of His Highness should be continued to any Chief or individual not enjoying a salute of at least ten guns.<sup>12</sup> On receipt of the replies the Governor-General in Council decided<sup>13</sup> that for the future the privilege of being addressed by the title of Highness should be restricted to Ruling Chiefs who are entitled to a salute of not less than ten guns, whether permanent or personal, and to certain noblemen and ladies, not within that category, named in a list annexed to the Circular of February 8, 1889, by which these orders were promulgated. In September 1889 it was further intimated to all authorities concerned that, as a matter of courtesy, the lawful and recognised wives and widows of all who bear or have borne the title of Highness might also be addressed by that title.<sup>14</sup> It is quite unnecessary to examine here the reasons for the exceptions to the general rule or to recapitulate the various cases in which the title of His Highness has been refused. It will suffice to mention that in January 1894 only some twenty persons in India, not being Ruling Chiefs, were entitled to the designation His or Her Highness and that the main ground on which the appellation was refused to the Prince of Arcot was that he is not a Ruling Chief.<sup>15</sup> The persons by exception retaining the title were the senior Ranis of Cochin and Travancore, eleven Tanjore Ranis, five Sindh Mirs, the Maharaja of Benares,<sup>16</sup> and Agha Sultan Muhammad Shah, the head of the Bombay Khojas.

We have merely to add as regards the title of His Excellency that it is not now applied to any Chief in India, though in virtue of long usage it is still employed in official communications addressed to the Minister of Nepal. When Sir Harry Prendergast, the Agent to the Governor-General at Baroda, stated in May 1891 that the Baroda Dewan was addressed as His Excellency, the Government of India cautioned him not to apply that expression to the Dewan or to anybody else in a Native State. "It is improper"—so the warning ran<sup>17</sup>—"that any British Officer in India should apply to the official of any Native State in India the title by which the Viceroy is addressed."

In December 1894 a suggestion that the Minister of the Hyderabad State should be accorded the style "Excellency" as a personal distinction while in office, was negatived by the Government of India.

§ 793. On the subject of proposals for the grant of Native titles in India we may note that an examination of the distribution of the titles Rao, Rai and Khan Bahadur, and Rao and Khan Sahib during the years 1881 to 1886 showed that titles of these descriptions had been granted much more frequently in some provinces than in others. A circular,<sup>18</sup> dated September 30, 1886, was therefore issued to Local Governments and Administrations and chief political authorities in these terms:—

"His Excellency the Viceroy considers it desirable that the present practice of granting personal titles, in isolated cases, to Native gentlemen recommended

<sup>11</sup> Pro. A, Political I., April 1884, Nos. 83-85.

<sup>12</sup> Pro., Internal A, July 1888, Nos. 289-290.

<sup>13</sup> Pro., Internal A, March 1889, Nos. 19-44.

<sup>14</sup> The original circular of February 1889 dealt with the case of ladies, but in terms liable to be misunderstood. We therefore quote only the revised and final orders in the text. See Pro., Internal A, September 1889, Nos. 164-167.

<sup>15</sup> Pro., Internal A, June 1891, Nos. 106-115, and February 1891, Nos. 247-251.

<sup>16</sup> K.-W. of Pro., Internal B, January 1894, Nos. 257-259.

<sup>17</sup> Pro., Internal B, July 1891, Nos. 179-180. For the Hyderabad case of 1894 see Pro., Secret I, January 1895, Nos. 17-18.

<sup>18</sup> Pro., Internal A, December 1886, Nos. 177-185. A subsequent circular requires that recommendations for Native titles shall reach the Foreign Office not later than November 15 and April 15, as the case may be.—Pro., Internal A, September 1894, Nos. 130-131.

by the different Local Governments and Administrations, should be discontinued, and that such titles should be distributed periodically.

“I am, therefore, to request that in future, all recommendations for titles to Native gentlemen may be submitted for the consideration of His Excellency the Viceroy during the first and last quarter of each year, so as to be in time for the Queen’s Birthday *Gazette*, and the *Gazette* published on the 1st of January.”

§ 794. Under these orders proposals for the grant of Native titles are submitted by chief political authorities twice a year. It may be useful to call to mind in this connection the caution expressed in Lord William Bentinck’s Resolution of 1829 (see paragraph § 759 above) against lowering the value of titles by bestowing them on persons whose social standing is, in popular estimation, inferior. The Foreign Department of the Government of India has often had occasion to point out that eligibility for a title of honour partly depends upon the possession of good social status. For instance, when titles of Khan Bahadur and Rai Bahadur were proposed in 1883 for certain Hospital Assistants,<sup>19</sup> the Foreign Secretary, Mr. Charles Grant, remarked that apparently these titles had never yet been conferred on men of so low a position and that the concession would be a distinct step forward in the direction of reducing the value of the titles. On that occasion no titles were given to Hospital Assistants, but Senior Hospital Assistants have since been declared by Military Rules to be eligible for the titles of Bahadur, Rai, and Rai Bahadur, etc.,<sup>20</sup> and the title of Rai Bahadur was conferred in 1887 on Hospital Assistant Pati Ram when promoted to that rank.<sup>1</sup> He had done good service with the Afghan Boundary Commission. Since that date titles have frequently been conferred on Senior Hospital Assistants. Other cases might be quoted in which doubts were expressed whether the nominees of local authorities were of the proper class and status to receive rewards in the form of titles; but as these cases are necessarily of a personal character, it will suffice to give references in a foot-note<sup>2</sup> by which they can be traced if required, and to say that there is no doubt as to the eligibility of men of good family and influence in the country and of officials of the standing of Deputy Collectors and Extra Assistant Commissioners.

§ 795. In the Resolution of May 1829 literary distinction was not enumerated amongst the grounds upon which titles might be granted. This omission was observed by Lord Dufferin who in February 1887 telegraphed to the Secretary of State that the Native titles in use did not sufficiently enable the Government to adequately recognise eminent merit among Hindus and Muhammadans in purely oriental studies. To correct this defect and in commemoration of Her Majesty’s Jubilee, Lord Dufferin proposed,<sup>3</sup> with the permission of the Secretary of State, “to establish a literary title for eminent Hindu and another for Muhammadan *literati*.” The result was the issue of the following notification, No. 811-I., dated February 16, 1887:—

“His Excellency the Viceroy and Governor-General having taken into his consideration that adequate means do not exist whereby he can recognise eminent distinction in learning among the loyal Hindu and Muhammadan subjects of Her Most Gracious Majesty the Queen Empress of India, and being desirous to commemorate the event of the Jubilee of Her Majesty’s Accession to the Throne, has resolved to institute a new title for eminent services rendered by Hindus or Muhammadans in the promotion of oriental learning.

“His Excellency the Viceroy and Governor-General directs that in the case of Hindus, the title shall be *Mahamahopadhyaya* and in the case of Muhammadans *Shams-ul-Ulama*.

“The title shall be prefixed to the name of the title-holder.

“To persons upon whom the title *Mahamahopadhyaya* is conferred shall be granted a *khilat* consisting of an *Ushnisha* or turban and an *Uttariya* or shawl.

<sup>19</sup> Pro. A, Political I., August 1883, No. 154.

<sup>20</sup> India Army Circulars, 1885, Clause 93 (5).

<sup>1</sup> Pro., Frontier A., July 1887, Nos. 86-101.

<sup>2</sup> Pro. A, Political I., August 1883, No. 227.

Pro. B, General I., February 1884, Nos. 202-206.

Pro. A, Political I., July 1884, Nos. 85-87.

Pro., Internal A, August 1885, Nos. 112-114.

Pro., Internal B, August 1886, Nos. 331-333, of which

the K. W. contains a useful collection of precedents.

<sup>3</sup> Pro., Internal A, June 1887, Nos. 52-57.

To persons upon whom the title of *Shams-ul-Ulama* is conferred shall be granted a *khilat* consisting of an *Ammama* or turban and a *Jubba* or cloak.

“Persons upon whom the title of *Shams-ul-Ulama* has been conferred shall in Darbar take rank next below titular Nawabs and persons upon whom the title of *Mahamahopadhyaya* has been conferred shall in Darbar take rank next below titular Rajas.”

The title for Hindus means “great among the great teachers,” and the title for Muhammadans “sun among the learned.”

§ 796. In 1885 the Bombay Government suggested that some simple badge or sign might be devised to accompany the bestowal of the titles of “Khan Bahadur,” “Rao Bahadur,” “Khan Sahib” and “Rao Sahib,” such as a silk or muslin scarf to be worn on ceremonial occasions. The reply was that some inconveniences would be involved in the acceptance of the proposal, and that on the whole the Government of India would prefer to leave matters on their present footing.<sup>4</sup> But in the previous year the Government of India had accepted the proposals of Mr. (now Sir Charles) Bernard for the presentation of chains, swords and medals to persons honoured with titles in Burma. The circumstances of that Province differ from those of India and a concession at once politic and in accordance with popular sentiment there, might be unnecessary in other parts of the Indian Empire. Mr. Bernard thought that the *sanad* might recount the services in consideration of which the titles were bestowed and that the lowest title proposed should be conferred by the Chief Commissioner.

The titles proposed and sanctioned were—

- (1) *Kyet thaye zaung shwe Salwe ya Min* (Recipient of the gold chain of honour);
- (2) *Thuye gaung ngwe Da ya Min* (Recipient of the silver sword of bravery);
- (3) *Ahmudan gaung Tazeik ya Min* (Recipient of a medal for good service).

The Government of India remarked that the titles awarded in British India were obviously unsuited to the Burmese, and that it was desirable to avoid distinctions bearing any resemblance to those ordinarily granted by the Court of Mandalay. They accepted the titles suggested by Mr. Bernard and his other proposals on the ground that “the combination of a title with some outward symbol of distinction such as chains, swords, or medals, coupled with the grant of a parchment certificate or *sanad*, would constitute an honour, which the Burmese would value more highly than any other.” But they requested<sup>5</sup> that, in accordance with the rules prevailing in British India, recommendations for the grant of all honorary medals, as well as chains and swords, might be submitted for the orders of the Governor-General in Council, and said that it had “been found convenient not to recount the services for which a title is granted in the parchment or *sanad* conveying it.”

In 1891 it came to notice that the Bengal Government had frequently allowed recipients of Native titles to have medals included in the *khilats* presented to them with the *sanads* of their titles. After ascertaining the practice of other Local Governments the Government of India decided that when a title such as Rai Bahadur or Khan Bahadur is conferred, there is no objection to the presentation of a suitable *khilat*, if the Local Government so desires, but that it is preferable that a medal should not be given.\* If a *khilat* is given a *nazar* of equal value may be recovered from the grantee.†

<sup>4</sup> Pro., Internal A, May 1885, Nos. 116-118.

<sup>5</sup> Pro. A, Political E., July 1884, Nos. 212-243. The initials of these Burmese titles are K.S.M., T.D.M., A.T.M.

\* Pro., Internal A, September 1891, Nos. 90-96. See also for an earlier precedent against the grant of medals with titles the case of Mr. Edulji Pestonji, Bombay, Pro., Political B, December 1874; No. 70, and paragraph

§ 762 above.

† Demi-official to Madras, dated March 6, 1895 (Dep. I, May 1895, Nos. 8 and 9). Pro., Internal B, April 1893, Nos. 172-174, and December 1893, No. 106.

Pro. A, Political L, August 1883, Nos. 92-100, page 21 of K. W.

§ 797. The authority which can confer titles in India can also withdraw them for misconduct. In April 1875, Maulvi Izhar Husain, Mir Munshi in the Foreign Department of the Government of India, was dismissed from his appointment and proscribed from further employment under Government. Simultaneously the Government of India cancelled by formal order in the *Gazette* a notification of February 1862 by which the title of Khan Bahadur had been conferred upon him.<sup>6</sup>

§ 798. In 1878, the Raja of Puri in Orissa was convicted of murder and sentenced to transportation for life. The Raja was not a Ruling Chief but a person of peculiar sanctity, the official superintendent of the temple of Jagarnath; and he was even supposed by the Hindus of Orissa to be an incarnation of the deity. His victim was an old Hindu ascetic believed to possess the power of curing diseases. The ascetic was tortured by burning and otherwise for three hours in the Raja's palace and died some fifteen days afterwards from his injuries. The motive of the crime was obscure but was probably connected with the facts that the adoptive mother of the Raja had applied to the ascetic to restore the mental health of her adopted son and that the ascetic had professed to work the cure. On January 1, 1877, a *sanad* had been granted to the Raja conferring upon him the title of Maharaja. The *sanad* was returned to the Government of India and is on record formally cancelled. A notification was also published in the *Gazette* cancelling the order which had conferred the title upon the Raja as a personal distinction.<sup>7</sup>

§ 798. A. The title of Khan Bahadur was conferred on Abdul Ali of the Carnatic family in 1876. In 1880 Abdul Ali, being then about 20 years of age, petitioned the Viceroy for a higher title and forwarded with his petition the original *sanad* by which the title was granted to him. This was considered an act of disrespect and the title of Khan Bahadur was withdrawn by notification in the *Gazette*. The boy then apologised and the Government of Madras, in view of his age, position, and ignorance of the English language in which his petition was written, recommended that the apology should be accepted. The Government of India agreed and the title was restored.\*

§ 799. Lala Anup Singh was a Commissariat Gumashta upon whom the title of Rai Bahadur was conferred as a personal distinction by a *Gazette* order of January 1881. At the time of the Kabul war Jhelum was the terminus of the Punjab Northern State Railway, large supplies had to be collected there, and Anup Singh was head purchasing agent of the Commissariat Department at that place. There was practically no doubt that Anup Singh bribed the Jhelum Tahsildar to help him in obtaining from Government better prices for the supplies than he gave for them. The Military Department published a notification, No. 216, dated April 20, 1883, in these terms—"Anup Singh, Rai Bahadur, late Station Gumashta, Meean Meer, having been dismissed from the service of Government, it is hereby notified that he is disqualified for further employment under Government." The Foreign Department then notified<sup>8</sup>—"With reference to Military Department General Order No. 216 of this date, the Foreign Department Notification No. 13-G.P., of the 21st January 1881, conferring upon Lala Anup Singh the title of 'Rai Bahadur', as a personal distinction, is hereby cancelled."

§ 800. As we have mentioned in paragraph § 48, Sadik Hasan, the Nawab Consort of the Begam of Bhopal, was deprived in 1885 of his title of Nawab Walajah Amir-ul-Mulk and of the personal salute of 17 guns which was granted to him on the occasion of the Imperial Assemblage. The question of restoring these honours to him was under consideration<sup>9</sup> when he died in February 1890.

<sup>6</sup> Pro., General B, April 1875, No. 39.  
<sup>7</sup> Pro. B, Political I., July 1878, Nos. 49-50.  
<sup>8</sup> Pro., Political B, August 1880, Nos. 182-184; December 1880, Nos. 169-170; May 1881, Nos. 246-249.

<sup>8</sup> Pro. A, Political I., May 1883, Nos. 99-106.  
<sup>9</sup> Pro., Secret I., July 1886, Nos. 102, 104, 106.  
 Pro., Secret I., April 1890, Nos. 4-16.

§ 801. Raja Ram Singh, a resident of the Basti District of the North-Western Provinces, a man of some power and influence, but not a Ruling Chief, incurred the displeasure of Government in 1886. His conduct in seeking after women had brought him evil notoriety, and servants of his in a violent attempt to procure for him a good-looking girl of fifteen, just about to be married, the daughter of a cartman in his service, killed both the girl herself and her father. The Lieutenant-Governor of the North-Western Provinces proposed that Ram Singh should be excluded from Darbar and deprived of his title of Raja for ten years. These penalties were sanctioned by the Government of India but they preferred, without fixing a period, to leave the question of discontinuing the penalties to be reconsidered after ten years, if the Local Government should then think fit to make a recommendation to that effect. The title was hereditary and no precedent could be traced in which an hereditary title had been withdrawn. The case, therefore, constitutes a precedent.<sup>10</sup> The notification in the *Gazette* was thus worded:—"In consequence of the misconduct of Ram Singh of Bansi, in the Basti District of the North-Western Provinces, he is hereby deprived of the title of Raja which has hitherto been enjoyed by him."

§ 802. A precisely similar notification was published on October 30, 1893, in the case of Raja Mokham Singh of Partapner, 1893, Partapner in the Etawah District of the North-Western Provinces. Here also the title was hereditary and the Raja was not a Ruling Chief. The Raja had given himself up to drink and debauchery and had collected around him a set of unruly and riotous followers. Six cases were reported, of the years 1887 to 1893, in which the Raja or his followers had been concerned, five of assault or wounding, and one of an outrage on a girl. The orders as to the reconsideration of the penalty after ten years were the same in this case as in the case of the Raja of Bansi.<sup>11</sup>

§ 802 A. One more case may be mentioned in the present connection. In 1887, the title of Rai Bahadur was conferred upon one K. Kunjan Menon, a Madras judicial officer. The next year, apparently when he was Sub-Judge of Mangalore, he was convicted of corruption and sentenced to two years' rigorous imprisonment and a fine of Rs. 10,000. He was removed from the public service and the order conferring upon him the title of Rai Bahadur was cancelled by a notification in the *Gazette of India*.\*

§ 803. The summary in paragraph § 786 above related to hereditary titles, and our next subject is *ex-officio* titles. Before we pass on to that we have to summarise the preceding paragraphs, which relate primarily to specific titles, but include also some miscellaneous topics:—

(1) *The title of Prince has only once been formally conferred in India, but the use of it has occasionally been permitted as a mere matter of courtesy.*

(2) *In the Kabul Saddozai family the title of Shahzada has been limited to the sons of Shah Shuja and Shah Zaman, and the perpetuation of royal titles in India is generally undesirable.*

(3) *The sons of titular Chiefs may be allowed courtesy titles.*

(4) *The title of His Excellency is not now used for any Ruling Chiefs of Feudatory States or their Ministers.*

(5) *The title of His or Her Highness is now employed in accordance with fixed rules.*

(6) *Native titles are distributed twice a year. They should not be proposed for persons of inferior social status.*

(7) *Titles with which khilats are conferred have been established to reward literary merit.*

(8) *In India the presentation of badges or medals does not accompany the grant of Native titles, but a khilat may be given of which the cost may be*

<sup>10</sup> Pro., Internal A, August 1886, Nos. 320-321.  
<sup>11</sup> Pro., Internal A, November 1893, Nos. 27-29.

\* Pro., Internal B, October 1888, Nos. 212-214.

recovered from the recipient as a nazar. In Burma chains, swords and medals are presented with the sanads conferring titles.

(9) It is not desirable to recite in a sanad conferring a title the services in consideration of which the title is conferred.

(10) Titles, whether hereditary or personal, may be withdrawn for misconduct.\*

§ 804. Until 1882 no general rules were laid down regarding the use of *ex-officio* titles in British India. The practice prevailing in different Provinces was not (and indeed is not now) uniform and was thus described in a Foreign Office note of March 8, 1882, which is here copied with a few corrections.— In Bengal and the Punjab, Native Subordinate Judges, Deputy Magistrates, Deputy Collectors and Munsifs (in Bengal) are styled “Rai Bahadur” and “Khan Bahadur.” In the North-Western Provinces, Sadr Amins are styled “Rai” and “Khan” and Principal Sadr Amins “Rai Bahadur” and “Khan Bahadur.” In the Lucknow Courts, Muhammadan Assistant Commissioners, Honorary Assistant Commissioners, and Extra Assistant Commissioners are styled “Munshi” and “Khan Sahib Bahadur”, and the Hindus “Rai” or “Pandit” and “Sahib Bahadur.” In the Central Provinces, Assistant Commissioners are styled “Mir Maulvi” and “Pandit.” In Bombay, First Class Subordinate Judges are allowed the title of “Rao Bahadur” or “Khan Bahadur” and Second Class Subordinate Judges the title of “Rao Sahib” or “Khan Sahib.” Mamlatdars, Inspectors of Police, Head Accountants, Deputy Educational Inspectors, Inspectors of Registration, and Sub-Assistant Conservators of Forests are addressed as “Rao Sahib” and “Khan Sahib.” In Sindh, Extra Assistant Collectors are styled “Rao Bahadur” and “Khan Bahadur.” It does not clearly appear from subsequent records how far these various appellations are still used in vernacular correspondence in the different Provinces; but it has not been thought necessary to institute any special inquiries on the point. A good many more *ex-officio* titles have been sanctioned for use in the Bombay Presidency; but it is quite sufficient to indicate in a general way how this matter stands without attempting to give an exhaustive list of these titles.

§ 805. In 1871 the Punjab Government by notification in the *Gazette* directed that Extra Assistant Commissioners and Magistrates should, during their term of service, be addressed in vernacular correspondence as “Rai Bahadur” or “Khan Bahadur,” according as they were Hindus or Muhammadans. The Government of India in the Foreign Department called for the papers and expressed the opinion that the use of these appellations should be rather restricted than extended. The Punjab Government, in reply, referred to old orders<sup>12</sup> of 1832 laying down forms of address and titles for Native Judges. These orders, however, were not general orders, for they were confined to two Provinces, and three classes of Native officials, namely, Principal Sadr Amins, Sadr Amins, and Munsifs. In 1873 the Bengal Government reported its proceedings in authorising the use of such *ex-officio* titles as are here under consideration, and the Supreme Government approved.<sup>13</sup> In 1879 the Resident at Hyderabad suggested that the Bombay practice should be extended to the Mahratta Province of Berar, or that, if this would unduly cheapen such titles as “Khan Bahadur” and “Rao Bahadur,” then the titles of “Khan Sahib” and “Rai Sahib” might be applied to Extra Assistant Commissioners and officials of equal rank, and Tahsildars and others of like standing might be addressed as “Azam,” “Mihriban” or “Tahsildar Sahib.” The Government of India replied<sup>14</sup> that “such titles are marks of the favour of Government, and form an efficient mode of recognising individual merits or services. Their use, while permissible as a matter of courtesy in vernacular correspondence, should be restricted in English official documents to cases in which the titles have been inherited or conferred as a personal distinction.”

\* Since this Chapter was in print the Government of India have ruled in letter No. 830, dated March 8, 1895, to Madras, that “the grant of titles by a Ruling Native Chief to subjects of another Native State is inadmissible as constituting a clear violation of the fundamental principle of the political isolation of Native States.”

<sup>12</sup> No. 2.62, dated November 27, 1832. Orders of Vice-President in Council to Courts of Sadr Dewani Adalat, Presidency and North-Western Provinces.

<sup>13</sup> Pro., General B, October 1873, Nos. 203-209.

<sup>14</sup> Pro., Political B, August 1879, Nos. 83-85.

Pro., Political B, September 1879, Nos. 259-261.

So the matter stood till 1882, and it is perhaps to be regretted that in some of the subsequent proceedings attention was not directed to the difference between a mere style or form of address in vernacular correspondence, such as was permitted by the orders of 1879, and the general adoption in all official proceedings of *ex-officio* titles similar to those conferred by the Government as personal distinctions. From this point the history of the matter divides itself into two branches: one concerned with the grant of certain *ex-officio* titles in the Public Works Department, and the other with the grant of *ex-officio* titles to the members of Local Boards. In both cases the orders originally issued have been recognised as mistaken and have been withdrawn.

§ 806. In paragraph 16 of the famous Resolution<sup>15</sup> on Local Self-Govern-

ment issued on May 18, 1882, during the Viceroyalty of Lord Ripon, a direction was given in these terms—“With a view to stimulate the candidature of men of respectable standing in Native society, and to mark the importance of the functions of these boards in the eyes of Government, the Governor-General in Council is pleased to direct that the courtesy titles of ‘Rai (or Rao) Bahadur’ or ‘Khan Bahadur’ shall in all official correspondence be applicable to Native members of all local boards during their term of office.” The Government of Bombay quickly represented that it was inexpedient “that titles which have hitherto been highly valued, rarely bestowed, and only earned after years of assiduous and successful labour in the service of Government, should be scattered broadcast over the land.” The Government of Madras raised a similar objection; and in 1883 and 1885 orders were passed somewhat restricting the use of honorary titles for non-official Presidents, Vice-Presidents, Chairmen and members of local bodies in these Presidencies. Later on it appeared that the doubts felt in Bombay and Madras as to the expediency of the orders of 1882 were general, and a Resolution was issued on June 17, 1891, by the Government of India in the Home Department which said—“The Governor-General in Council has recently had under consideration the question whether the present system of granting *ex-officio* titles should be maintained. After consulting all Local Governments and Administrations on the subject, His Excellency in Council has come to the conclusion that it is not desirable, having regard to the identity of these courtesy titles with those which are awarded by Government, as a special and highly valued mark of distinction, for long and honourable service of the public, that they should any longer be used merely as a mark of official rank.” The orders of May 18, 1882, were therefore withdrawn, and the suggestion was made to the Governments of Madras and Bombay that the similar orders in force in those Presidencies which were issued to carry out the decision of 1882, should also be recalled. Finally the Resolution declared that members of Municipal and Local Boards who, under the operation of the cancelled orders already enjoyed the privilege of being addressed by *ex-officio* titles, should continue to be so addressed until they should quit office.<sup>16</sup>

The Bombay Government wished to maintain the system sanctioned in 1883 and 1885 and proposed that they themselves, if the *ex-officio* honorary titles were abolished, should “retain the power of granting these distinctions for exceptional zeal and merit on the part of Presidents and members in Municipal work.” The reply of the Government of India touched two points of importance—the prerogative of the Viceroy as representing Her Majesty, and the restriction of the grant of titles, in the case of members of local bodies, to those who might earn them by good work. “The Governor-General in Council”—so the letter ran—“is of opinion that so extensive a use of *ex-officio* titles as is involved in the maintenance of the existing orders in Bombay is not desirable, on the ground that it seriously detracts from the value which should attach to similar titles when conferred in recognition of special services by His Excellency the Viceroy as representative of Her Majesty the Queen, Empress of India. Members of local and Municipal Committees who have already accepted office with *ex-officio* titles will retain them in accordance with paragraph 3 of the Resolution of this Department dated the 17th June last, so long as they hold office; but, in the opinion of the Government of India, no

<sup>15</sup> Home Department Resolution No. 17—747-59, dated May 18, 1882.

<sup>16</sup> Resolution of the Government of India in the Home Department, No. 16—1070-1081, dated June 17, 1891.

newly appointed or elected member should have such titles conferred on him, except as a personal distinction for good service rendered. *His Excellency the Viceroy, while from the nature of the case unable to delegate to the Bombay Government the power to confer titles (a power which rests only in the Governor-General as the representative of Her Majesty the Queen-Empress)* for exceptional zeal and merit in Municipal work, will always be prepared to give favourable consideration to any recommendation which a Local Government may see fit to make in favour of individuals for the conferment of an honorific title as a personal distinction in recognition of good work done in municipal or local administration." The Government of India added that they would raise no objection to Presidents and Vice-Presidents of Municipal and Local Committees continuing to enjoy titles as an official distinction should the Government of Bombay desire so to order. "These offices," it was said, "are not so numerous; they entail on the holder considerable trouble and responsibility; and appointment to them, whether by election or nomination, is itself a distinction."

§ 807. The case of *ex-officio* titles in the Public Works Department began and ended a little earlier and had a like termination. In March 1882 a proposal of that Department to grant the *ex-officio* titles of Rao Sahib and Khan Sahib to Assistant Engineers and of Rai—or Rao—or Khan Bahadur to Executive Engineers was negatived after discussion in Council,<sup>18</sup> and in December 1882 somewhat similar proposals from Bombay were likewise rejected. But encouraged by the grant in 1885 of the *ex-officio* titles of Rao Sahib and Khan Sahib to Native officers of the Salt and Customs and Abkari Departments drawing salaries of ₹150 per mensem and upwards, the Bombay Government renewed their proposals, and after a good deal of discussion the Government of India issued a Resolution, dated September 6, 1886, which was thus expressed:—

"The Governor-General in Council is pleased to sanction the grant of the title of Rai Bahadur, Rao Bahadur, or Khan Bahadur, *ex-officio* to all Native gentlemen in the Public Works Department holding the substantive rank of Executive Engineer.

"Assistant Engineers and Upper Subordinates who attain the rank of Honorary Assistant Engineer may receive, *ex-officio*, the title of Rai Sahib, Rao Sahib, or Khan Sahib, and they will be eligible for the title of Rai Bahadur, Rao Bahadur, or Khan Bahadur on the recommendation of the Local Government.

"Other subordinates of higher rank than Overseer will be eligible for the title of Rai Sahib, Rao Sahib or Khan Sahib if they have held with credit for five years the charge of an important sub-division and are recommended for the distinction by the Local Government, with whom will rest the decision whether the charge is of sufficient importance to justify recommending the subordinate for the honour."

In 1887 doubts were entertained whether this Resolution had not gone too far. Chief political authorities, including Local Governments and Administrations, were consulted, and the opinions received were, almost without exception, to the effect that the grant of titles *ex-officio*, especially of titles identical with those which are granted as personal distinctions, was inexpedient as tending to lower the value of those honorary rewards. The Resolution, September 6, 1886, was cancelled by a further Resolution of May 12, 1891; and the Government of India held that it would suffice to "leave Local Governments and Administrations to take the initiative in recommending specially deserving officers for the grant of honorific titles when they think it desirable to do so." It was, however, directed that officers and subordinates who had already received titles under the orders of September 1886, should retain them while they remained in the Public Works Department.<sup>19</sup>

§ 808. In 1891 Sir Harry Prendergast, the Governor-General's Agent at Baroda, asked for instructions on certain points connected with the use of *ex-officio* titles in that State. Some Native officials who in British service had enjoyed *ex-*

<sup>17</sup> Government of India, Home Department, to Bombay, No. 1499, dated September 18, 1891. Pro. (Foreign Department) Internal B, November 1891, Nos. 46-47.

<sup>18</sup> K. W. of Pro. A, Political I, August 1883, Nos. 92-100, page 27.

<sup>19</sup> Pro., Internal A, December 1886, Nos. 161-163. Pro., Internal A, May 1891, Nos. 207-213.



*officio* titles such as Rao Bahadur, retained these distinctions in Baroda after their services had been lent to the Darbar. Other Native officials of the State were addressed by similar courtesy titles, and orders had lately been issued that the Military Secretary, a Baroda subject, should be addressed as Rao Bahadur. The orders<sup>20</sup> of the Government of India were communicated demiofficially in these terms:—"The Government of India have no desire to interfere in any way with the custom of a Native State in respect to the courtesy titles used in addressing the State's officials. The titles are purely local and attach to offices, not to individuals. It is, however, unfortunate that the titles should in some cases be the same as those which the Viceroy confers as personal distinctions; and it would be better if a different form could be used.

"The Government of India cannot permit the Ruler of a Native State in India to grant a personal title to a British subject; but that is a distinct question.

"To apply these principles to the cases mentioned by Prendergast, there is no objection to the use of *ex-officio* titles in respect to Native officials of the British service who are lent to Baroda, any more than in respect to the Native officials who belong exclusively to Baroda; provided that the former class are given the titles which attach to their Baroda appointments, but not any superior titles by which they may have been *ex-officio* addressed when in British service, unless the Government of India have given permission for the retention of the British *ex-officio* titles.

"Another point may be noticed in connection with the matter, namely, the extent to which political officers should recognise and use *ex-officio* titles which are used by the Government of Native States in which they are employed. It is courteous to fall in with the ways of the Native States, as far as you can with propriety, in correspondence with the Darbar, but there are cases in which this cannot be done."

As an illustration of these cases the caution was given as to the use of the expression "His Excellency" to which we have already referred in paragraph § 792 above.

The Government of India ruled in 1873 that *ex-officio* titles "cease with office unless continued in special cases by express order of the Governor-General in Council for exceptional merit and as a personal distinction." There is also a ruling of 1886 that an *ex-officio* title "is retained only during tenure of the office to which it is appurtenant. A special and further act of grace alone can entitle the recipient to the honour as a personal and life distinction."<sup>21</sup>

§ 809. The substance of what we have said on the subject of *ex-officio* titles may be thus stated:—

Summary.

(1) *In British India where it is still the practice to associate certain Native titles ex-officio with the tenure of certain official positions, the use of the titles, in the absence of orders to a different effect, is permissible only as a matter of courtesy and in vernacular correspondence.*

(2) *In British India, subject, as above, to orders which may have been passed in particular cases, the only Native titles which should be used in English official documents are those which have been (i) inherited, or (ii) conferred by the British Government as personal distinctions, or (iii) conferred by a Ruling Chief and formally recognised by the Government of India, or (iv) which under the orders of 1891 are retained in the Public Works Department or retained, or, in Bombay only, retained or acquired, by Members of local bodies.*

(3) *Subject to the exceptions just noted, it is undesirable to lower the value of courtesy titles identical with those awarded by Government as marks of distinction by using them merely as marks of official rank.*

(4) *The Government of India do not desire to interfere with the use of ex-officio titles in Native States, but it is inexpedient that the titles so used should be the same as the titles which the Viceroy confers as personal distinctions.*

<sup>20</sup> Pro., Internal B, July 1891, Nos. 179-180.

<sup>21</sup> Pro., General B, October 1873 Nos. 208.  
Pro., Internal B, December 1886, Nos. 271-273.

(5) *Native officials of the British service employed in Native States may be addressed by titles locally attached to their offices but not by British ex-officio titles as such, except with the permission of the Government of India.*

(6) *Unobjectionable ex-officio titles recognised in Native States may be used by Political Officers, as a matter of courtesy, in correspondence with Darbars. Rules (1), (2), and (3) above are subject to this proviso.*

(7) *An ex-officio title ceases with office unless continued by express order of the Governor-General in Council.*

§ 810. Our next subject is salutes in India. The "Table of Salutes to Native

Analysis of the Table of Salutes.

Chiefs and Nobles of India and certain Chiefs near Aden" is revised from time to time and the most recent edition of it bears date March 1, 1894. With the single exception of the Raja of Benares the list is now entirely confined to Ruling Chiefs in India and four Arab Chiefs near Aden. The Table is framed in three parts; the first part shows the permanent or dynastic salutes; the second part personal salutes; and the third part local salutes. Permanent salutes are accorded to 107 Ruling Chiefs and the Raja<sup>1</sup> of Benares. There are three salutes of 21 guns, eight of 19, thirteen of 17, seventeen of 15, five of 13, and thirty-six and twenty-six respectively of 11 and 9 guns. There are thirteen personal salutes including two for Arab Chiefs and one for the Jam of Las Bela. In the other ten cases a Ruling Chief in India has been allowed as a special concession personal to himself a greater number of guns than are allowed in the permanent or dynastic salute of his State. There are only four local salutes. The salutes of Bhopal, Gwalior, Indore and Jammu and Kashmir are 19 guns each. But the Chiefs of these States are allowed salutes of 21 guns within the limits of their own territories. It is the practice to accord salutes to Chiefs who are minors.\*

§ 811. The Maharaja of Benares has a peculiar status which justifies the

As a general rule, salutes are granted only to Ruling Chiefs. exception made in his favour. His case apart, it is a well-established principle that salutes shall be granted to none but Ruling Chiefs. There have been, no doubt, a good many instances to the contrary in the past, and for adequate reasons other exceptions could be made in the future. But the general rule has been affirmed by the Government of India and the Secretary of State in the case of the Maharani of Balrampur. At the time of the Imperial Assemblage Maharaja Digbijai Singh of Balrampur, an Oudh Talukdar who had done signal service in 1857, received the concession of a personal salute of nine guns. He died in 1882 and ten years later the Government of the North-Western Provinces proposed that the salute should be continued as a personal distinction to his widow. In recommending the grant of this salute the Government of India observed, in a despatch<sup>2</sup> dated December 21, 1892, to the Secretary of State,—“We do not consider that the grant of salutes to *Zamindars* is desirable, but the case is a very special one, and can hardly form an inconvenient precedent.” The Secretary of State in intimating that Her Majesty had been pleased to sanction the continuance of the salute for the lifetime of the Maharani, replied<sup>3</sup>—“I entirely agree with Your Excellency that the grant of salutes to *Zamindars* is undesirable, and I am decidedly of opinion that, unless for very special reasons, the accepted principle that *Ruling Chiefs alone should receive such marks of distinction, should be adhered to.*” The Maharani died on June 20, 1893, so her name does not appear in the revised table.

A personal salute of 13 guns was granted at the Imperial Assemblage to the Maharaja of Burdwan as “the greatest and one of the best *Zamindars* in Bengal,” but after his death the Government refused to continue it.<sup>4</sup> And there are many other cases in which the Government has declined either to continue or to grant salutes to titled individuals other than Ruling Chiefs. Thus, in 1869 the late King of Oudh asked that his salute of 21 guns might be

<sup>1</sup> The present Chief enjoys the title of Maharaja as a personal distinction. The Revised Table is in Pro, Internal A, March 1894, Nos. 233-238.  
<sup>2</sup> Pro., Internal B, December 1891, Nos. 189-191.—Salute of the Raja of Tehri.

<sup>3</sup> Pro., Internal A, April 1893, No. 17.  
<sup>4</sup> Pro., Internal A, April 1893, No. 18.  
<sup>5</sup> Pro., Political A, December 1877, Nos. 299-322.  
K.-W., Internal B, December 1885, No. 309.

restored to him, but the Government of India was unable to accede to his request.<sup>5</sup> In 1875 the Madras Government proposed that the Raja of Jaipur, a great *Zamindar* in the Vizagapatam District, might be put on the same footing in the list of salutes as the Maharaja of Vizianagram, who is also a *Zamindar*. The Government of India stated<sup>6</sup> in reply—"that the salute accorded to the Maharaja of Vizianagram<sup>7</sup> is a personal one to the present Maharaja, and that it is not to be considered as a ground for the concession of similar marks of distinction to others who may claim to hold an equal position in respect of lineage or possessions. *As a rule the Governor-General in Council is averse from conferring the honour of a salute upon persons in India who are not entitled to be considered Ruling Chiefs.* The circumstance that a nobleman or landowner holds extensive possessions or is descended from an ancient family does not afford sufficient ground for a deviation from that rule; such deviation can only be supported by very special and exceptional reasons. The Governor-General in Council therefore regrets that he is unable to comply with the request preferred by the Government of Madras on behalf of the Raja of Jaipur." When the late Saiyid Mansur Ali Khan Bahadur of Murshidabad agreed in 1880 to retire from his position, his title of Nawab Nazim of Bengal, Behar and Orissa, ceased to exist. The hereditary title of Nawab Bahadur of Murshidabad has been granted to his eldest son, Nawab Sir Saiyid Husain Ali Khan Bahadur, but the Government of India and the Secretary of State agreed with the Government of Bengal that neither the title of His Highness nor a salute should be granted to the Nawab.<sup>8</sup> He was, however, allowed precedence over all titled nobles of Bengal. This point was noted as material when the Maharaja of Darbhanga, in 1889, unsuccessfully sought the concession of a salute.<sup>9</sup> The Maharaja is a great *Zamindar* of Bengal, not a Ruling Chief. In August of the same year, the Government of India held that a Rani of the late Raja of Tanjore who claimed a salute as the consort of the late Chief, had no title to that honour.<sup>10</sup> Lastly we may note that the salute of the Prince of Arcot lapsed<sup>11</sup> when Muhammad Munawar succeeded to the title in May 1889.

§ 812. The power to deal finally with questions relating to salutes in India

rests with Her Majesty the Queen, Empress of India, acting by and with the advice of the Privy Council; but the Viceroy may provisionally increase, reduce, or grant salutes subject to the approval of Her Majesty. The Court of Directors with their despatch No. 57, dated April 22, 1857, forwarded an Order in Council by which Her Majesty had approved a Table of Salutes, but this Table was never published<sup>12</sup> as it was received just after the outbreak of the Mutiny. Owing to the conduct of different Chiefs at that time various alterations were made in the list, and in 1863, the Governor-General, Lord Elgin, forwarded to the Secretary of State a revised table for sanction. A revised table was approved<sup>13</sup> by Her Majesty in Council on March 1, 1864, and a further revision<sup>14</sup> was similarly effected on June 26, 1867. In January 1875, the Secretary of State observed that the Order of 1867 had in several instances been departed from without Her Majesty's sanction and asked for exact information and proposals with the view of obtaining a new Order in Council. He also inquired whether a clause should be inserted in any revised Order "according permission to the Viceroy, provisionally, to increase, reduce, or grant salutes to Native Princes or Chiefs, in special cases, without further reference to Her Majesty in Council." He noted that such a clause, if thought desirable, would require to be very carefully framed, and asked

<sup>5</sup> Pro., Political A, March 1869, Nos. 144-146.

<sup>6</sup> Pro., Political A, October 1875, Nos. 94-95.

<sup>7</sup> The late Maharaja of Vizianagram, who died in 1879, had a personal salute. By local custom the present Maharaja receives a salute of 13 guns at Vizagapatam only in British territory. This salute is not entered in the Table of Salutes, because it has not been sanctioned by the Queen.—Pro., Internal A, June 1886, Nos. 9-12, and Pro., Internal B, April 1891, Nos. 376-377; June 1892, Nos. 26-31; July 1892, Nos. 15-16 and Nos. 198-199.

<sup>8</sup> Aitchison, I, p. 5. Pro., Political A, March 1881, Nos. 148-176, July 1881, Nos. 48-50, and February 1882, Nos. 423-428.

<sup>9</sup> Pro., Internal B, May 1889, Nos. 161-163. These Proceedings contain an excellent note by Mr. Botelho which should be referred to whenever applications for salutes are

received from or on behalf of persons who are not Ruling Chiefs.

<sup>10</sup> Pro., Internal A, September 1889, Nos. 164-167.

<sup>11</sup> This salute has a long history but it is not necessary to detail it. See Aitchison, VIII, page 6, and the following file:—

Pro., Political A, April 1874, Nos. 6-8.

Ditto July 1875, No. 90.

Ditto June 1882, Nos. 24-26.

Pro., Internal A, April 1885, Nos. 73-79.

Ditto June 1889, Nos. 18-20.

<sup>12</sup> Government of India to Bombay, No. 496, dated August 12, 1863.

<sup>13</sup> Secretary of State's despatch, No. 17, dated March 31, 1864.

<sup>14</sup> Pro. A, Political I., October 1883, Nos. 149-186, E. W., page 6.

the opinion of the Government of India as to the precise manner in which it should be worded.<sup>15</sup> Before this despatch was answered the Secretary of State forwarded<sup>16</sup> an Order of Her Majesty in Council, dated October 26, 1875, which said, with reference to the Indian Table of Salutes—"Whereas it is expedient that power should be given to the Viceroy and Governor-General of India, with the sanction of Her Majesty, to modify and amend the said table in such manner as shall to him from time to time seem desirable: Now Her Majesty has been pleased, by and with the advice of Her Privy Council, to order that such power, so limited, be given to the Viceroy and Governor-General of India for the time being; provided that every modification or amendment which may be sanctioned by the said Viceroy shall be subject to the approval of Her Majesty, and shall be invalid until Her Majesty's pleasure in regard to it shall have been duly taken."

§ 813. In reply to the Secretary of State's inquiry as to the terms in which the Viceroy should be empowered to deal provisionally with salutes in India, the Government of India said in a despatch No. 56, dated March 3, 1876, that the terms of the above order would be suitable if the words in italics were omitted, but no reply was ever made to this suggestion, so the Order in Council of October 26, 1875, is still in force. With the same despatch of March 1876 was forwarded an amended table prepared on the principles which

Principles observed in framing the Table of Salutes. are still observed. Thus the names of the Maharaja of Nepal, the Amir of Afghanistan and its dependencies, the Sultan of Maskat, and the Sultan of Zanzibar were omitted on the ground that they were Foreign Powers, and would receive, as a matter of course, a salute of 21 guns on the occasion of a visit to British territory. The table included only Feudatory States or States whose external relations are controlled by the Government of India and individuals whom the British Government desired, for special reasons, to honour with a salute. A separate table was prepared for salutes which are personal or local. "When a Chief," said the Government of India, "receives an addition to his salute, or when his salute is reduced by way of personal punishment, his name, with the appropriate number of guns, would be entered in the Personal Table, so as to avoid changes in the General Table which contains only the salutes given when there are no exceptional circumstances. It is convenient that the Government should be able to confer a much-prized distinction on individuals who have earned it by good services; and at the same time embarrassment will be avoided by showing that such distinctions are personal and temporary." The Chiefs included in the General Table were classed, as now, according to the number of guns assigned to them, and their names were arranged, as now, in alphabetical order, with the view of obviating questions on the subject of precedence.

§ 814. The question of precedence as between Chiefs does not, indeed, depend in any way upon the number of guns to which they are severally entitled in their salutes, nor does an increase in the number of his guns give a Chief any higher place in precedence. The two forms of State or personal distinction are entirely distinct. Precedence lists have been framed for the Punjab and Central India, and a precedence list was proposed by Colonel Keatinge for Rajputana in 1869 but never formally sanctioned. No complete precedence list for all the Ruling Chiefs of India has ever been authoritatively settled. On the occasion of the Imperial Assemblage the difficulty of determining the precedence of Chiefs from different Provinces or Presidencies was avoided by grouping them territorially. In the Punjab Maler Kotla, with a permanent salute of 9 guns, ranks above Faridkot, Chamba and Suket with 11 guns each; and in Central India Jaora, with 13 guns, ranks below Samthar with 11 guns, and Jhabua, with 11 guns, below Baraundha, Nagod and Maihar with 9 guns each.<sup>16</sup> In January 1876 the Bombay Government inquired whether the position assigned to a Native Chief in the Table of Salutes was to be accepted as defining the relative rank of himself and others; and explained that they wanted this information to enable them to settle questions of precedence in future

<sup>15</sup> Pro., Political A, March 1876, Nos. 543-552.

| <sup>16</sup> Pro., Secret I., July 1887, Nos. 14-16.

Darbars among the Chiefs of the Bombay Presidency. The Government of India simply answered the question in the negative.<sup>17</sup>

§ 815. In July 1875, the Acting Governor of Madras inquired whether any rules existed in regard to the grant of salutes by Native Princes. The Government of India replied<sup>18</sup>—“that, though no express rules have been laid down, the following principles should govern the consideration of any case that may arise:—

- “(a) Native Princes possessing artillery may fire guns in their own territory whenever, and as often as, they please.
- “(b) They would be expected to salute with the proper number of guns British Officers in their territories who are entitled by our rules to salutes.”
- “(c) British Officers, who are not entitled to salutes, should not be saluted, and those who are so entitled should not receive more than the authorised number of guns.”

§ 816. There was a good deal of discussion in former years about the propriety of allowing salutes of 21 guns in India. In a despatch<sup>19</sup> preparatory to the Imperial Assemblage the Viceroy, Lord Lytton, expressed full concurrence in the following remarks of Sir Lewis Pelly:—“In the British Empire a salute of 21 guns is a Royal Salute, and may be held to imply perfect sovereignty. But there is no Chief in India who enjoys perfect sovereignty, nor any Native State that is other than protected, subordinate, and without nationality. If the salute of the Empress should become (like that, for instance, of the French Emperor) one of 101 guns, or even of, say, 31 guns, then the objection to according to Native Chiefs, while in their own territories or in British India, salutes of 21 guns would lose force. But so long as the salute of the Empress of India continues to be 21 guns, I would never voluntarily grant any Native Chief a salute of more than 19 guns as a maximum. Of course, those Chiefs who, under treaty or other valid instruments, are already entitled to salutes of 21 guns, cannot be deprived of that privilege unless for cause shown.” In acknowledging this despatch<sup>20</sup> and several others on the subject of salutes the Secretary of State informed the Government of India that Her Majesty had “been pleased to command that in India the salute of the sovereign shall be 101 guns and the salute of the Viceroy and Royal Flag 31 guns.” The present table allows eight salutes of 21 guns, three permanent to the Chiefs of Baroda, Hyderabad and Mysore, one personal to the Maharaja of Jodhpur, and four local (as already mentioned) within the limits of their own territories to the Chiefs of Bhopal, Gwalior, Indore and Kashmir.

§ 817. As regards the very exceptional grant of salutes to individuals other than ruling Chiefs or great *Zamindars* or high functionaries of the British Government, a leading case is that of the late Rao Raja Sir Ganpat Rao, President of the Council of Regency in Gwalior. In December 1887 Sir Lepel Griffin, Agent to the Governor-General in Central India, proposed that Sir Ganpat Rao should be allowed in British territory, as in Gwalior, a salute of 11 guns. On an examination of precedents it was found that no salute had ever been granted to the President of a Council of Regency in a Native State; for instance, Sir Deva Singh, the President of the Patiala Council, got no salute when visiting British territory. In the table of salutes sanctioned by Her Majesty in Council in 1857, the Nizam's Minister was entered as entitled to a salute of 17 guns.<sup>1</sup> In the revised Table published in May 1864 this entry reappeared<sup>2</sup> with the addition “For life (Salar Jung).” Sir Salar Jung thus had a salute of 17 guns as Minister of the Hyderabad State before he was placed in charge of the administration during the minority of the Nizam. As we have seen (*vide* paragraphs § 401 to § 403 above) this arrangement was made in February 1869; and the Amir-i-Kabir was Sir Salar Jung's colleague. In September 1869

<sup>17</sup> Pro. A, Political I., October 1883, Nos. 181 and 183.

<sup>18</sup> Pro. A, Political I., October 1883, Nos. 162 and 165.

<sup>19</sup> No. 52, dated October 25, 1876, paragraph 7.—Pro., Political A, December 1877, No. 295.

<sup>20</sup> Despatch No. 16, dated February 8, 1877. — Pro., Political A, February 1878, Nos. 464-468.

<sup>1</sup> Foreign Consultations, August 21, 1857, Nos. 57-58.

<sup>2</sup> Pro., Political A, May 1864, No. 96.

the Resident proposed that the Amir-i-Kabir should be granted a like salute. The Viceroy provisionally sanctioned this proposal for so long as the Amir-i-Kabir should retain his position in the administration of the Hyderabad State; and this sanction was approved by the Secretary of State in Council.<sup>2</sup> A like salute was granted in 1877 to the Nawab Vikar-ul-Umara when he succeeded the Amir-i-Kabir, and the action of the Viceroy was confirmed<sup>4</sup> by the Secretary of State in these terms:—"Her Majesty the Queen and Empress of India has been graciously pleased to approve the grant of a salute of 17 guns to Nawab Vikar-ul-Umara, now Shams-ul-Umara Amir-i-Kabir Bahadur, for so long as he may remain one of the Regents of the State of Hyderabad." In 1882 the Government of India in consequence of the insanity of the young Chief of Kolhapur sanctioned the appointment of Jai Singh Rao Ghatge, Chief of Kagal, as Regent to administer the State. The Chief of Kagal is a feudatory of the Kolhapur Maharaja; and it was arranged that he should be assisted in the administration by a Council consisting of the Dewan, the Chief Judge and the Chief Revenue Officer. The Bombay Government proposed that the Regent should be allowed a personal salute of 9 guns in order to invest him "with consequence in the eyes of the feudatories, Sardars, and people of Kolhapur." The Viceroy granted the salute subject to the confirmation of Her Majesty's Government; and the Secretary of State communicated the sanction of Her Majesty, the salute to be enjoyed so long as the Regent continued to act in that capacity.<sup>5</sup> In the case for which these precedents were collected the Viceroy, Lord Dufferin, with the previous sanction of the Secretary of State, in accordance with this Kolhapur precedent, granted Sir Ganpat Rao a salute of nine guns during his period of office as President of the Gwalior Council of Regency. Nawab Sir Salar Jung died in February 1883. The second Amir-i-Kabir ceased to be Regent when the Nizam was entrusted with the administration of his State. The Regent of Kolhapur died in March 1886; and Sir Ganpat Rao in August 1888. Thus all the personal salutes mentioned in this paragraph have lapsed.

§ 818. The increase or decrease of the salute of a Chief is a very effective instrument of reward or punishment and changes in salutes have often been made as marks of the favour or displeasure of Government. It may be said generally that all the nine personal salutes<sup>6</sup> now granted to Ruling Chiefs in India have been granted as marks of the favour of Government. The salute of the Chief of Jaora was increased from 11 to 13 guns for services in the Mutiny.<sup>7</sup> For similar services<sup>8</sup> the Raja of Nahan was granted a salute of 7 guns, which was increased to 11 in 1867, and again in 1886 to 13,—on the latter occasion as a personal distinction. An addition of 2 guns for life to the salute of Maharaja Ram Singh of Jaipur was made in 1869 in recognition of his liberal policy in the Rajputana famine. At the Imperial Assemblage in January 1877 his personal salute was further raised to 21 guns. His successor,

<sup>2</sup> Pro., Political A, October 1869, Nos. 42-45.  
Pro., Political A, November 1869, Nos. 60-63.

Pro., Political A, January 1870, No. 9.  
<sup>4</sup> Pro., Political A, February 1873, Nos. 430-463.

<sup>5</sup> Pro., Political A, June 1882, Nos. 191-218.  
Pro., Political A, August 1882, No. 410.

<sup>6</sup> The particulars of these salutes are as follows:—

Name of Chief.	Dynastic Salute. No. of guns.	Personal Salute. No. of guns.
The Maharaja of Jodhpur . . . . .	17	21
The Maharaja of Jaipur . . . . .	17	19
The Maharaja of Orchha . . . . .	15	17
The Maharaja of Bhaunagar . . . . .	11	15
The Raj Sahib of Dhrangadra . . . . .	11	15
The Jam of Nawanagar . . . . .	11	15
The Raja of Nabha . . . . .	11	13
The Raja of Sirmur (Nahan) . . . . .	11	13
The Nawab of Maler Kotla . . . . .	9	11

Ten salutes are entered in the Table, but the Mir of Khairpur, whose name occurs, has since died. The Nawab of Junagarh, who was granted a personal salute of fifteen guns, died on September 29, 1882;—Aitchison, VI, page 192.

<sup>7</sup> K. W. of Pro. A, Political I., October 1883, Nos. 149-186, page 21.

<sup>8</sup> Aitchison, IX, page 112.

Maharaja Sir Madho Singh, has a personal salute of 19 guns.<sup>9</sup> The Imperial Assemblage was the occasion for many grants of salutes and additions to salutes as marks of the favour of Government. Four additional guns for life were then granted to the Chiefs of Bhaunagar, Dhrangadra, Junagarh, and Nawalnagar; and two additional guns for life to Sindhia and Holkar and to the Chiefs of Udaipur, Travancore, Rampur, Rewa, Orchha, Kashmir, Jind, Nabha and Maler Kotla. The salute of the Raja of Ratlam was raised from 11 to 13 guns, and this also was a personal concession.<sup>10</sup> Numerous life salutes were granted to Ruling Chiefs and others; for instance, a salute of 17 guns to the Nawab Consort of Bhopal, of 13 guns to the Maharaja of Burdwan, of 11 guns to the Chief of Tehri and the Thákur of Morvi, and of 9 guns to the Maharaja of Balrampur and to fifteen Ruling Chiefs in India. The salutes of these Ruling Chiefs have since been made permanent; but the Thákur Sahib of Gondal, who was amongst them, now has a permanent salute of 11 guns. As to reduction or discontinuance of salutes by way of penalty, we have already referred to the cases of the Nawab Consort of Bhopal (paragraph § 48) and the Chiefs of Jhabua (paragraph § 55), Porbandar (paragraph § 58), Jodhpur (paragraph § 62) and Banswara (paragraph § 63). On most of these cases something more remains to be said, and a few other cases may be mentioned. The troops of Maharao Ram Singh of Kota mutinied in 1857 and murdered the Political Agent and his two sons at the Kota Residency. The Maharao did not attempt to assist the Political Agent and as a mark of the displeasure of Government the salute of the Chief was reduced from 17 to 13 guns. The full salute was restored in 1866 when Maharao Shatru Sal succeeded Ram Singh, his father.<sup>11</sup> The circumstances of the murder of the uncle of the Chief of Lawa have been detailed in paragraph § 301. On account of this crime the salute of the Nawab of Tonk was reduced in 1867 from 17 to 11 guns. But as the offence was personal to the deposed Nawab and no reasons existed for inflicting a penalty on the State or reducing its dignity, the ruling Nawab was allowed a salute of 17 guns on the occasion of the visit of the Prince of Wales to India. At the time of the Imperial Assemblage the Nawab of Tonk was granted a life salute of 17 guns, but this number of guns was restored to the State as a permanent salute in the following year.<sup>12</sup> The Jhabua salute of 11 guns was restored a year after it had been taken away as the administration of the State was favourably reported on.<sup>13</sup> The arrangement by which the Raja of Porbandar is allowed a salute only outside Kathiawar in British India continued till March 1895.

The Banswara case is fully stated in a despatch<sup>14</sup> of the Government of India, dated March 3, 1876, with which they submitted various proposals for the revision of the Table of Salutes. "The salute," they said, "of the Maharawal of Banswara was reduced from 15 to 11 guns in 1869 for a period of six years on account of certain false charges preferred by him against the Rao of Kasalgarh, and the reduction was approved by Her Majesty's Government. The period of reduction would have expired on the 1st August 1875, but the Banswara State having been guilty of a flagrant breach of its treaty stipulations in committing an unprovoked attack on subjects of Partabgarh, and in supporting its encroachments on Partabgarh territory by the production of false evidence, we were unable to restore to the Maharawal of Banswara the full salute to which His Highness would otherwise have been entitled. The Maharawal has, therefore, been entered in the General Table as entitled to a salute of 15 guns, while the name of the present Chief is entered in the Personal Table as entitled only to 11 guns during the pleasure of Government." The full salute was eventually restored<sup>15</sup> in February 1880. We are about to recount the Jodhpur case in some detail presently (see paragraph § 820 below). In connection with the case of Basant Ali Khan, a servant of the King of Delhi, who was deeply implicated in the murder of Europeans in the Delhi Fort in

<sup>9</sup> Pro., General A, November 1868, Nos. 9-17, and April 1869, Nos. 67-70. K. W., Pro. A, Political I., October 1883, Nos. 143-186, page 24; Aitchison, III, pp. 47-48.

<sup>10</sup> The particulars in the text are taken from the Gazette Extraordinary of January 1, 1877, and the latest Table of Salutes. As to the case of the Raja of Ratlam, see despatch No. 26, dated January 25, 1878, Pro., Political A, February 1878, Nos. 464-468.

<sup>11</sup> Aitchison, III, p. 318. Foreign Consultations, August 3, 1859, No. 337; Pro., Political A, August 1866, Nos. 81-84.

<sup>12</sup> India despatch to the Secretary of State, No. 26, dated January 25, 1878, and Pro., Political A, January 1879, Nos. 73-75.

<sup>13</sup> Aitchison, IV, p. 433, Pro., Judicial A, March 1866, No. 4.

<sup>14</sup> Pro., Political A, March 1878, Nos. 543-552.

<sup>15</sup> Aitchison, III, p. 22.

1857, the Government of India in 1874 recommended the withdrawal of the salute of the Nawab of Cambay. Basant Ali Khan was arrested when in the service of the Nawab who, it was supposed, could not have been ignorant of his antecedents. The prisoner, when in the custody of sepoy of the Nawab, managed to defeat justice by poisoning himself; and the Nawab failed to render proper assistance in subsequent inquiries. The Secretary of State, however, did not pass orders till more than two years after the death of Basant Ali, and in the end, the penalty was remitted in consideration of this lapse of time and in the hope that the Nawab would not again fail in his duty.<sup>16</sup> The Nawab was informed that the penalty had been actually sanctioned and was remitted only on these grounds. When the conduct of the Khan of Kalat was under inquiry (see paragraph § 59) the Agent to the Governor-General, Baluchistan, proposed to dispense with his salute. The Viceroy agreed, marking, he said, his disapproval of the Khan's cruelty by withholding from him the usual honour.\*

§ 819. It has not appeared necessary to afford here information about the salutes of British functionaries, except as due to them in Native States, nor have we attempted to deal, except quite incidentally, with the salutes of external foreign powers. Our main object being to explain the policy and practice of the

Summary.

Government of India in its relations with the Indian Protected States, our summary here is naturally limited to salutes in India. It is to these salutes only, excluding the salutes of British functionaries, that we refer in the following condensed version of what has been said above. We include, however, as a matter connected with the position of the Paramount Power, a reference to the Royal Salute:—

(1) *Except for very special reasons, salutes are granted only to Ruling Chiefs. As a fact, salutes have been granted in certain cases of Regency to a Chief or officers administering the State.*

(2) *The power to regulate salutes rests with Her Majesty the Queen, Empress of India, acting by and with the advice of Her Privy Council.*

(3) *But the Viceroy may modify and amend the Table of Salutes subject to the sanction of Her Majesty.*

(4) *Salutes are permanent, personal or local. A personal salute may be fixed for a Chief without any change being made in the permanent salute appertaining to the Chief of his State as such.*

(6) *The question of precedence as between Chiefs is not affected by the number of guns in their salutes.*

(7) *No salute should be given to a British officer in State territory unless he is entitled to a salute in British territory. An officer so entitled should receive in State territory his authorised number of guns.*

(8) *The Royal Salute in India is 101 guns for the Sovereign and 31 guns for the Viceroy or Royal Flag.*

(9) *Alterations in salutes are frequently used as marks of the favour or displeasure of Government.*

§ 820. This treatise is not the place for any description of the manner of holding Darbars or of the etiquette prescribed in the reception of Chiefs on private or public occasions. Such matters of ceremony are matters of minute detail and are not the subject of any general rules or principles which could be usefully formulated.<sup>17</sup> Moreover on each several occasion of any importance special programmes are prepared which are a sufficient and ought to be the sole guide of the officers concerned in the conduct of the ceremonies. A Political Officer employed in ceremonial visits or receptions would naturally look to the programme prepared for the occasion and to nothing else. It would be merely an embarrassment to him if he had to refer at such times to any extensive manual.

\* K. W. of Pro. A, Political I., October 1863, Nos. 148-186. Pro. Secret, March 1874, Nos. 93-164, and Political A, August 1875, Nos. 395-400.

\* Pro. Secret E, June 1893, Nos. 229-230.

<sup>17</sup> For some further reasons why Darbar etiquette is not a proper subject for general rules, see Pro., Political A, February 1877, Nos. 214-216, in which the Government of India declined to have prepared a uniform code of ceremonial.



There are, however, two points connected with Darbars on which we propose to remark. One of these is that the Viceroy determines questions of precedence; and the other, that an arrest should not be made in Darbar. The leading cases are those of the Maharaja of Jodhpur and of the intended arrest of the Senapati at Manipur.

The Jodhpur case is one of those prepared in 1875 by Mr. (now Sir Mortimer) Durand, and we reproduce it without alteration.

The Jodhpur case, 1870.

[ In the course of the preparations for the Viceregal Darbar at Ajmir in 1870 the Maharaja of Jodhpur asserted his claim to be seated on a level with the Udaipur Chief. The claim was carefully considered by the Government of India, and it was decided that the proper place for Jodhpur was below Udaipur. But no final orders were to be passed until the Viceroy reached Ajmir, "as it was impossible to permit any Chief to stipulate for terms before coming to Darbar." On the 13th October the Governor-General's Agent in Rajputana telegraphed to the Jodhpur Darbar:—"Viceroy will not decide regarding seat till the Maharaja arrives at Ajmir." On the following day His Highness intimated to the Agent that he was about to start, but the intimation was coupled with a distinct warning that if the position he claimed were not granted, he should "not attend the public Darbar." This intention was again announced in a letter from the Maharaja's Private Secretary to the Agent, dated the 15th October. His Highness expressed himself in less curt language, and adverted to "the uniform and loyal attachment of the House of Jodhpur to the Paramount Power," but his purpose was as clearly stated as in the former letter. When the Viceroy's decision was made known to the Maharaja he carried out his threat, and absented himself from the Darbar. An explanation was at once called for, and the correspondence above quoted then first came to the notice of the Government of India. It served to show that the Maharaja's conduct was not the result of any sudden fit of pique. His Highness's explanation was unsatisfactory. The Governor-General's Agent showed that his claim to equality with Udaipur was wholly untenable, and noticed the fact that the Maharaja's advisers had "begged and entreated him to attend the Darbar." Colonel Brooke's letter ended as follows:—

["I consider the conduct of His Highness as most unbecoming and insulting to the British Government and deserving of some mark of its severe displeasure, but as it appears to have been the Maharaja's own personal act, I would advise that whatever notice be taken, it should fall as much as possible on himself personally and not upon the State he rules."]

[To this recommendation the Government of India sent an immediate reply. After a recapitulation of the reasons which had induced His Excellency in Council to place Jodhpur below Udaipur in Darbar the letter went on as follows:—

["The papers forwarded under cover of your letter show that the Maharaja had determined beforehand to absent himself from the Darbar in the event of a decision being given adverse to his claims. His Excellency the Viceroy, however, desires me to remark that under no circumstances can he permit any Chief to dictate the terms on which he is to attend Darbar; *the Viceroy asserts, in the fullest and most unqualified manner, his right to determine the position which every Chief shall occupy at the Darbars and other State ceremonials held by the Representative of Her Majesty the Queen.* His Excellency is accordingly pleased to decide that in all Darbars and State ceremonials the Maharana of Udaipur shall take precedence of the Maharaja of Jodhpur.

["The Maharaja is well aware that the course which he thought fit at the last moment to adopt, notwithstanding the remonstrances of the Political Agent, the advice of his private friends and the entreaties of his responsible advisers, was an act of the gravest disrespect to the Representative of the Queen, and that it was an offence derogatory to his honour as a Chief who has received distinguished marks of the Royal favour. Every Chief present in Darbar felt it to be so. His Excellency the Viceroy was therefore compelled to give public expression to his displeasure by refusing to visit the Maharaja or to receive from him a salute as His Excellency passed the Jodhpur camp on his visit to

the other Princes and by directing the Maharaja at once to quit British territory without the honours usually shown to his exalted rank. These measures are, however, in the opinion of His Excellency insufficient, and means must be taken to mark in a more substantial manner His Excellency's sense of the Maharaja's conduct. The correspondence will therefore be forwarded to the Secretary of State that Her Majesty's commands may be taken.

["In the meantime, until Her Majesty's pleasure is known, His Excellency the Viceroy is pleased to direct that the Maharaja shall receive neither a salute nor any of the honours usually shown him, it is further necessary that the Viceroy's displeasure should be expressed in as public and marked a manner as the Maharaja's offence. This letter will accordingly be published in the *Gazette of India*, and you will officially furnish a copy of it to each of the Chiefs named on the margin who attended the Darbar at Ajmir."]

The Maharana of Udaipur.  
The Maharao Rana of Bundi.  
The Maharao Rana of Kota.  
The Maharaja of Kishangarh.  
The Maharaj Rana of Jhalawar.  
The Nawab of Tonk.  
The Raja of Shahpura.

[In forwarding a copy of the correspondence for submission to Her Majesty the Queen, the Viceroy observed :—

["The act of grievous disrespect which the Maharaja has offered to Her Majesty in the person of Her Representative is one which comes home with peculiar force to the minds of the people of India, and the requirements of the case cannot in my opinion be otherwise met than by a severe and public mark of Her Majesty's displeasure.

["I recommend that for two years the Maharaja be deprived of his salute, and that thereafter his salute be reduced for life from 17 to 13 guns, in addition to any other mark of the Royal displeasure which Her Majesty may see fit to direct."]

It does not appear that any reply was received to this letter. In 1873 the Maharaja applied for the restoration of his salute, and for a reconsideration of the orders regarding his position at State ceremonials. No notice was taken of this communication. On the accession of the present Chief the full salute was restored.<sup>18</sup>]

The principles to be deduced from this case are—

(1) [*The Viceroy is entitled to determine the position which Ruling Chiefs shall occupy at the Darbars and other State ceremonials held by the Representative of Her Majesty the Queen, Empress of India.*

(2) [*A refusal on the part of a Ruling Chief to accept the position assigned to him by the Viceroy is an act of disrespect to Her Majesty.*]

§ 821. The leading facts in the Manipur case were stated in the first chapter of this compilation. Nearly all that is material in connection with the question of the proposed arrest of the Senapati in Darbar appears in the telegram<sup>19</sup> of the Government of India of June 5, 1891, from which we have already given extracts in paragraph § 8, and in the documents upon which that telegram was founded. After consultation with Mr. Quinton at Calcutta, the Government of India instructed him, in paragraph 4 of their letter No. 360-E., dated February 21, 1891, that the Senapati should be removed from Manipur and punished for his lawless conduct. They did not indicate the method in which the deportation was to be effected, but they asked Mr. Quinton what steps he considered necessary for carrying out the removal without affording the Senapati the chance of making a forcible resistance. Mr. Quinton, about a week before his arrival at Manipur, sent in advance Lieutenant Gurdon to confer with Mr. Grimwood, the Political Agent. Lieutenant Gurdon reached Manipur on March 15, telegraphed Mr. Grimwood's views to Mr. Quinton on March 16, and rejoined Mr. Quinton and explained them on March 18. Mr. Grimwood was against the removal of the Senapati, who, he first said, could not be

<sup>18</sup> Pro., Political A, December 1870, Nos. 425-434.

Pro., Political A, February 1873, Nos. 172-174.

<sup>19</sup> It will suffice to refer here to the print of this telegram in K. W. No. 3 of Pro., Secret E., Nos. 441-458,

where the relevant papers are set  
For the convenience of those who  
Keep-With, some numbers and dat  
in the text.

margin.  
that  
cited

taken alive; but the final opinion given by Mr. Grimwood was that the Senapati might be deported, if he were assured that he would be allowed to return to Manipur eventually. On March 18 Mr. Quinton telegraphed to the Government of India:—"I propose requiring Regent and the Darbar to meet me on arrival; announce decision of Government; arrest Senapati, and inform him that length of his exile and return depend on his conduct and the tranquillity of the country." The Government of India approved these proposals by telegram<sup>20</sup> on March 19. On March 21 at Sengmai, one march from Manipur, there was a conference between Mr. Quinton, Colonel Skene, Mr. Grimwood and Mr. Cossins, the Assam Assistant Secretary. Immediately after this conference Lieutenant Gurdon heard for the first time of the plan of arresting the Senapati in Darbar. Mr. Quinton sent for Lieutenant Gurdon and told him that the Senapati would be arrested at the Darbar next day, and that it would be his, Lieutenant Gurdon's, duty to proceed with the Senapati that same afternoon from Manipur to Sengmai. As we know, the Darbar was summoned but never held. The Senapati would not attend, and the unsuccessful attempt to arrest him by force led to the shelling of the Residency and the murder of British Officers.

Imputations were abroad that the arrest of the Senapati in open Darbar would have been a treacherous proceeding. Search was made for precedents, but very few were found. In 1875 when the Gaekwar of Baroda was charged with trying to poison the Resident, the Foreign Secretary telegraphed to Sir Lewis Pelly—"Arrest Gaekwar, and inform him of charge against him at moment of arrest." Sir Lewis Pelly, however, informed the Gaekwar in Darbar at the Residency of the orders of Government, and, supposing for some reason that the arrest was not to be carried out within Residency limits, drove with the Gaekwar, at the close of the Darbar, to a point just outside those limits and there arrested him, the two being in the carriage together.<sup>21</sup> On October 12, 1879, General Roberts held a Darbar in the Bala Hissar at Kabul and at the close of it arrested the principal Ministers of the Amir, who were suspected of using their influence against us.<sup>22</sup> Colonel Sandeman, not long before May 1891, arrested in open Darbar the Naib Governor of Kej Mekran who had attended at his summons.<sup>23</sup> We may add another precedent which does not appear to have been traced when Mr. Quinton's intention to arrest the Senapati was being discussed by the Government of India. Sir Lepel Griffin arrested in Darbar one Jalal-ud-din of the Bhopal State. On October 26, 1885, Sir Lepel Griffin held a Darbar at Bhopal in which he announced the orders of Government depriving the late Nawab Consort, Sadik Hasan, of his titles and salute and excluding him finally from public affairs. The next day Sir Lepel held a second Darbar at which he again read out these orders. Describing his proceedings<sup>24</sup> Sir Lepel Griffin wrote:—"To the principal persons I said some words of commendation or of warning, and one Jalal-ud-din, former Police Magistrate (who has been deeply implicated in every villany in the State of late years), I arrested then and there, and made him over to the Political Agent for trial. Against this man I have numerous proofs of torture and tyranny, and ample evidence to secure his imprisonment or transportation. He has been, perhaps, the worst of the many evil instruments of the ex-Nawab; and the dismissal from office of two others of his creatures, as notorious for oppression and corruption, I also announced . . . . This Darbar had an excellent effect and has shown the official world of Bhopal that it is intended that the orders of Government shall not remain a dead letter."

In their telegram of June 5, 1891, the Government of India referred to the arrests of the Naib Governor of Kej Mekran and of the Amir's Ministers at Kabul, and stated very fully both the facts connected with the intended arrest of the Senapati and their own conclusions on the subject. The proposed Darbar at Manipur would not have been a conference between equals or any thing of the nature of a hospitable reception. It would have been an assemblage sum-

<sup>20</sup> *Vide* Viceroy's telegram No. 864-E., dated April 30, 1891, to Secretary of State, where the date of the telegram to Mr. Quinton is by mistake printed as March 21.

<sup>21</sup> K. W., Secret E., Pro. June 1891, Nos. 1-75, page 8, where the references given are Pro, Political A, January 1875, No. 203, and Baroda Blue-book No. 6, page 76.

<sup>22</sup> In the same K. W., the references given are—

Supplement, October 1879, Nos. 337-392 (No. 338).

Ditto December 1879, No. 205 (of Nos. 114-213).

<sup>23</sup> Demi-official of May 13, 1891, from Sir R. Sandeman, K. W., Pro., Secret, E., June 1891, Nos. 101-156, page 25.

<sup>24</sup> Pro., Secret, July 1889, No. 109. Confidential letter from Agent to the Governor-General, dated October 25, 1885.

moned by the Representative of the Paramount Power to declare the orders of the British Government in a case of disputed succession. Such an assemblage would have been a suitable occasion for announcing the banishment of the Senapati. The Regent fully understood that he was required to attend, with the Senapati and his other brothers, to hear the decision of Government. There was nothing of the nature of allurement. The Senapati was bound to attend. The Government of India saw no treachery whatever in Mr. Quinton's intention to arrest the Senapati there and then in Darbar, if he declined to submit to the orders of Government, which as a subject of a subordinate Native State he was bound to obey.

The case was closed by the Secretary of State in these words <sup>25</sup> :—

“ One question remains, which I think may be better dealt with in considering the orders of your Government than in considering the action of your subordinates. I refer to Mr. Quinton's intention for causing the Senapati, should he not surrender, to be arrested in Darbar. I have considered this subject very carefully in the light of your telegram of 11th May last, in which you explained that you had no specific information on this point until the receipt of Mr. Quinton's telegram of 7th May, and I am satisfied that in giving your sanction to the proposals formulated in Mr. Quinton's telegram of 18th March, you had no reason to contemplate, and in fact did not contemplate, this action. I fully concur with you that nothing like treachery can be imputed to Mr. Quinton in this matter, but *care should be taken that persons summoned to attend Darbars, which are almost universally understood to be held for ceremonial purposes, should not be subjected therein to measures of personal restraint.*”

---

<sup>25</sup> Despatch No. 25, dated July 24, 1891, paragraph 17.  
Pro., Secret E., October 1891, Nos. 113-115.

## APPENDIX D.

### THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

#### CONTENTS.

##### PREAMBLE.

#### CHAPTER I.—PRELIMINARY.

##### SECTIONS.

1. Short title.  
Extent.  
Commencement.  
Saving of other laws and of treaties.
2. Repeal.
3. Interpretation-clause.

#### CHAPTER II.

##### POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. Exercise of powers of Governor-General in places beyond British India, and delegation thereof.
5. Notification of exercise of delegation of such powers.
6. Appointment, powers and jurisdiction of Justices of the Peace.
7. Confirmation of existing Political Agents and Justices.
8. Extension of criminal law of British India to British subjects out of British India.

#### CHAPTER III.

##### INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

*Repealed by Act X of 1882.*

#### CHAPTER IV.

##### EXTRADITION.

11. Arrest and removal of persons other than European British subjects escaping into British India.
12. Direction and execution of warrant.
13. Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.
14. Requisitions for extradition by the Executive of any part of British dominions or Foreign power.
15. Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.  
Magistrate to inform Political Agent or Local Government.
16. Person arrested to be released after certain time if not proceeded against.
17. Bail.

#### CHAPTER V.

##### MISCELLANEOUS.

18. Power to make rules.
19. Execution of commissions issued by Foreign Criminal Courts.

##### THE SCHEDULE.

ACT No. XXI OF 1879.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 14th November 1879.)

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Whereas by treaty, capitulation, agreement, grant usage, sufferance and other lawful means the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

**Short Title.** 1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879."

**Extent.** It extends to the whole of British India; to all Native Indian subjects of Her Majesty beyond the limits of British India; and to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

**Commencement.** and it shall come into force on the passing thereof.

**Saving of other laws and of treaties.** But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

**Repeal.** 2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

**Interpretation-clause.** 3. In this Act, unless there is something repugnant in the subject or context,—

"Political Agent." "Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

"European British subject." "European British subject" means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. The Governor-General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor-General in Council from time to time thinks fit.

**Exercise of powers of Governor-General in places beyond British India, and delegation thereof.**

5. A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

**Notification of exercise or delegation of such powers.**

6. The Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

**Appointment, powers and jurisdiction of Justices of the Peace.**

The Governor-General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in Confirmation of existing Political Agents and Justices, or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend—

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

### CHAPTER III.

#### INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

*Repealed by Act X of 1882. The place of this chapter has been taken by sections 188 and 189 of the Code of Criminal Procedure.*

### CHAPTER IV.

#### EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor-General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor-General in Council, or by the Governor of the Presidency of Fort St. George in Council, or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

14. Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue, and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor-General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

Bail.

## CHAPTER V.

### MISCELLANEOUS.

Power to make rules.

18. The Governor-General in Council may, from time to time, make rules to provide for—

- (1) the confinement, diet and prison-discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;
- (2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and
- (3) generally to carry out the purposes of this Act.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court of Session or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

## THE SCHEDULE.

### SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

The following rules have been made under the above Act:—

*Foreign Department Notification.—Judicial, No. 31-J.,—dated the 13th March 1875.*—In exercise of the powers conferred on him by sections 13 and 15 of Act XI of 1872,<sup>1</sup> and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to make the following rules:—

1. The Political Agent shall not issue a warrant under section 11 of the Act in any case which is provided for by Treaty, if the Native State expressly desires to abide by the procedure of the Treaty, nor in any case in which application for surrender is made under section 14 to the Governor-General in Council or any Local Government.
2. The Political Agent shall not issue a warrant under section 11, except on a request preferred to him in writing by, or by the authority of, the person for the time being administering the executive Government of the Native State at which he is the British representative, and on the understanding that the provisions of Act XI of 1872<sup>2</sup> and of these rules are to apply to the case.
3. If the accused be a British subject, the Political Agent shall, before issuing such a warrant, consider whether he ought not to certify the case as one for trial in British India; and he shall, instead of issuing a warrant, so certify the case, if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India than in the Native State.
4. The Political Agent shall in all cases, before issuing a warrant under section 11, satisfy himself by preliminary inquiry that there is a *prima facie* case against the accused, and that the charge is not prompted by political motives.
5. If the person<sup>3</sup> surrendered under the warrant of a Political Agent issued under section 11, be not a British subject; or if, such person being a British subject, the Courts of the State, either by custom or by the express recognition of the Governor-General in Council, try Native British subjects surrendered to them by extradition: and the Political Agent after hearing the statement, if any, of the accused and making such further inquiry as he may deem necessary, is still satisfied that there is a *prima facie* case against the accused, and that the charge is not prompted by political motives, the Political Agent shall make over the accused to be tried by the ordinary Courts of the State in which the offence was committed; provided that the Courts of the State have, by custom or recognition as aforesaid, power to inflict the punishment which may be inflicted under the Indian Penal Code for the offence with which the accused person is charged.
6. If the accused be a British subject, but the Courts of the State do not by custom or recognition as aforesaid try Native British subjects, the Political Agent shall dispose of the case himself.
7. If the punishment which may be awarded under the Indian Penal Code for any offence for which an accused person has been surrendered as above be more than the Courts of the State by custom or recognition as aforesaid inflict, the Political Agent may try the case himself, if he thinks it advisable to do so.
8. Notwithstanding anything in the three preceding rules, the Political Agent shall try any such case himself or make it over for trial by the ordinary Courts of the State, if he be generally or specially instructed by the Governor-General in Council so to do.
9. In cases made over for trial by the Courts of a Native State under Rules 5 and 7,<sup>3</sup> the Political Agent shall satisfy himself that the accused receives a fair trial, and that the punishment inflicted in the case of his conviction is not excessive or barbarous; and if he is not so satisfied, he shall demand the restoration of the prisoner to his custody pending the orders of Government.

<sup>1</sup> Act XI of 1872 has been repealed. See now Act XXI of 1879, sections 2, 13, and 18.

<sup>2</sup> This rule was substituted for the original rule 5 by Notification No. 87-J., dated August 10, 1874.

<sup>3</sup> Read Rule 8.



10. A return of all persons made over for trial by the Courts of a Native State under Rules 5 and 7<sup>4</sup> shall be submitted half-yearly by the Political Agent to the Government of India or the Government of Madras or Bombay, as the case may be, in the following form:—

*Half-yearly Return, under Rule 9<sup>5</sup> of the Rules under the Extradition Act, IX of 1872,<sup>6</sup> of persons made over by the Political Agent at \_\_\_\_\_ for trial by the Courts of Native States under Rules 5 and 7,<sup>4</sup> for the period ending \_\_\_\_\_.*

Number.	NAME OF PERSON.	Nationality.	Offence with which charged.	Where arrested.	Date of surrender.	Native State to which surrendered for trial.	REASONS FOR SURRENDER.	Nature of sentence passed with date of sentence.	REMARKS.

11. Persons arrested in British territory on a warrant issued by a Political Agent under section 11, and persons arrested on a warrant issued under section 14, shall be treated as far as possible in the same way as persons under trial for a similar offence would be treated under the Code of Criminal Procedure or under the procedure in force in the Presidency towns, if the arrest takes place within any Presidency town.

12. The persons sentenced to imprisonment by the Political Agent, shall, if British subjects, be conveyed to the most convenient jail in British territory, there to be dealt with as though the conviction had taken place in a Court of British India; provided always that no appeal shall thereby be given other than is allowed by any rule for regulating appeals from the decisions of the Political Agent.

13. Nothing in Rules 5 to 10 inclusive, which refer to cases under section 13 of the said Act, shall be deemed to apply to Political Agents immediately under the authority of the Governor in Council of the Presidency of Fort St. George or the Governor in Council of the Presidency of Bombay.

*Notification No. 149-J., dated the 8th October 1875.*—The Governor-General in Council is pleased to order that the Notification of this Department (i.e., the Foreign Department), No. 31-J., dated 12th March 1875, publishing certain rules under Act XI of 1872 (The Foreign Jurisdiction and Extradition Act, 1872<sup>7</sup>), shall not apply to Native territory under the direct administration of the British Government, in which the Code of Criminal Procedure is in force.

<sup>4</sup> Read Rule 8.

<sup>5</sup> Read Rule 10. <sup>6</sup> Repealed. See Act XXI of 1870.

<sup>7</sup> Repealed. See Act XXI of 1870.