fixed in rupees and the main concession made allows a certain proportion to be drawn in sterling in this country at 2*s*. the rupee, a very favourable rate of exchange. The advantage, particularly to officers with families in this country, is substantial.

Pay had always been fixed at a rate held by financial authorities to be sufficient to enable the officer to defray the cost of passages for himself and his family to and from this country when he comes home on leave. This comfortable theory had ceased to fit the facts, and, in addition to the increases in actual pay, Government has undertaken to provide four return passages for the officer and his wife (and a single passage for each child) during a normal term of service.

It has also been decided in principle that British officers and their families shall be secured medical treatment by British doctors, but the means of satisfying this principle is still under consideration. Much turns on the decision to be taken in regard to the future of the medical services in India and, in particular, of the Indian Medical Service, which has hitherto supplied, through the civil surgeons employed by the provincial governments, the staff required for the medical care of the Services and their families.

Chapter IX

JUDICIAL—ECCLESIASTICAL

Judicial

The present higher Judicial system of British India dates from 1862, when, under the Indian High Courts Act 1861 (24 and 25 Vict. c. 104), Her Majesty established by Letters Patent High Courts of Judicature at Calcutta, Madras and Bombay. This Act, by amalgamating the "Supreme Courts" founded under Royal Charter, with the "Sadr Adalat" Courts established by the Company, brought to an end a complicated series of arrangements for the administration of justice. Something has been said in an earlier chapter about the enactment of laws for British India. The history of the courts is far too tortuous a subject to be discussed here, but it must be briefly noticed as illustrating the intervention of the Home Government in Indian affairs.*

Englishmen in India were controlled by the laws

* Sir C. Ilbert's "Government of India," 3rd edition, 1915, contains a summary of the history. As a description from the lay point of view of the conditions in Bengal produced by the early enthusiasms of the Supreme Court Judges, whom he calls "ermined interlopers" Kaye's "Administration of the East India Company," 1853, pp. 329-332, will repay perusal. Sir John Kaye (pp. 333-351) also gives an interesting account of the Company's courts and the origins of the judicial side of the Indian Civil Service.

of England, but the employment of Indians by the Company, and the settlement of Indian traders and peasants round the early factories, produced a problem that became much more difficult when the Company began to govern large tracts of territory. Outside the early settlements Muhammadan criminal law was in force, but Muhammadan rulers had not interfered with the customs and arrangements of the Hindus in such matters as marriage and inheritance. The British had no desire to meddle with Indian customs based on religious sanctions; it took seventy years from our firm establishment in Bengal to decide on prohibiting sati (the burning alive of Hindu widows). In the "plan" which Warren Hastings drew up in 1772 it was declared that "in all suits regarding marriage, inheritance, and caste, and other religious usages and institutions, the laws of the Koran with regard to Muhammadans and those of the Shaster with respect to Gentus shall be invariably adhered to"; and the courts of justice established by the Company under its own officers invoked the aid of Maulvis and Brahmins to advise on Muhammadan and Hindu law. Thus Indians came to be employed on responsible judicial work long before any considerable executive authority was put into their hands, and the practice was established (it is still in force wherever the jury system is not yet adopted) of appointing Indian assessors in criminal cases to advise the judge. The criminal law, outside the Presidency towns, was the Muhammadan law tempered by British regulations, and this system was not finally abolished until the Indian Penal Code was enacted in 1860.

It is not always understood that, as regards many of the most important affairs of human life, there is not in India (in contrast to European countries and the British Dominions) any uniform territorial law. The Hindu, the Muhammadan, the Parsi, and the member of some smaller but distinct communities, is governed by his own law or custom of marriage, of divorce (in the Moslem system), and of inheritance. Property may descend under entirely different principles according to the faith or race of its owner.

But the establishment under the Act of 1773 of the chartered Supreme Court at Calcutta,* in which Judges appointed by the Crown administered the law of England to all persons coming within their jurisdiction complicated the attempts of the local authorities to evolve an equitable combination of Eastern and Western jurisprudence.† English criminal law came to India before the humanitarian reforms of the early nineteenth century, and visited some offences more severely than the drastic Muhammadan code. An amending Act of 1781 somewhat curtailed the pretensions of the Supreme Court, but Warren Hastings' measure, which would have ended the conflict of jurisdiction by conferring on the Chief Justice the presidency of the Company's highest court, was upset as making that dignitary

* Recorders' Courts at Madras and Bombay followed in 1797; they became Supreme Courts in 1801 and 1823.

† "The problem was to simplify the general law and procedure, and to enact large principles of law and morality, with the least possible disturbance of the practices, prejudices, and organic institutions of Indian society." (Sir Alfred Lyall, "British Dominion in India," 5th edition, p. 382.)

pecuniarily dependent, in part, on the authorities whom he was intended to curb. The tradition of hostility between the judiciary and the Government took firm root in Calcutta and lived long. Meanwhile the Governor-General in Council found it necessary to exercise steadily increasing control over the subordinate criminal courts: it was found impossible to leave the Kazis unchecked. To the arrangements made, and unmade, for the conduct of revenue and judicial work by the Company's civilians the vexed question of the separation of judicial and executive functions owes its origin.

The Act of 1858 did not disturb existing judicial arrangements, but that of 1861 established three High Courts of judges appointed by the Crown, who technically held office "during pleasure," and of whom one-third must be barristers of England or Ireland, or advocates of Scotland of five years' standing, and one-third officers of the Indian Civil Service of ten years' standing who have had at least three years' experience as district judges. The qualifications for the other members of a High Court bench are now either five years' judicial office in a status not inferior to that of a "subordinate judge" or a judge of a small cause court, or ten years' practice as a pleader of a High Court.

Besides the Calcutta, Madras and Bombay Courts of 1862, chartered High Courts have now been established at Allahabad, Patna, Lahore and Rangoon. But for most purposes under Indian law the term "high court" embraces not only these but two other classes of courts, Chief Courts and Judicial Commissioners' Courts. From a lay point of view

the most notable distinction between a Chartered High Court and a Chief Court (a stage through which the Lahore and Rangoon High Courts have passed) is that the judges of the latter are appointed by the authorities in India, not by the Crown, and that their salaries and precedence are lower.

The Secretary of State advises His Majesty as to the appointment of individuals to High Court benches, and the Secretary of State in Council fixes the salaries, pensions, and leave-rules of the judges. Thus from time to time the India Office is closely concerned with judicial matters. Occasionally the attention of Parliament is directed to questions that arise out of Indian trials. Indian criminal law provides very great facilities of appeal, and no death sentence passed by a sessions judge can be executed until confirmed by the high court of the province. A person convicted in India gets far more latitude than his fellow unfortunate in England, for the High Court can deal by way of revision with any sentence passed by a court subordinate to it, and on its appeal side it considers the facts as well as points of law. Apart from the right of appeal, the convict can address a petition for mercy to the Provincial Government, which has power to remit any sentence (though not technically to grant Pardon), and from that Government's decision to the Governor-General in Council, and still further to the King. And there is a third resource: he can apply to the Judicial Committee of the Privy Council for leave to appeal against his conviction. That tribunal, which includes retired Indian Judges, and constantly hears difficult civil appeals from

India (sometimes of a nature wildly unfamiliar to Western courts, since the idol in a Hindu temple may hold property and engage in litigation through its lawful guardians) has made it clear that it is not a court of criminal appeal. But since in one case it quashed a death sentence passed by an Indian High Court on the ground that there had been a miscarriage of justice, a very large number of persons sentenced to death in India do present petitions for leave to appeal.

There is no supreme court for all India: the several High Courts have sometimes differed from each other, or from the highest authorities at home, notably on the question whether the Indian Divorce Act empowered an Indian Court to divorce persons domiciled in the United Kingdom. Hence difficult questions as to the possibility or desirability of introducing into Parliament legislation to resolve such doubts must sometimes be discussed between the India Office and the Government of India. The Secretary of State is furnished with a Legal Adviser, always a retired Judge of an Indian High Court, who (rather paradoxically for a retired judge) is also described as his Solicitor. He arranges for the briefing of counsel in cases to which the Secretary of State in Council is a party. Departmentally he is called on for advice of the most multifarious kind, sometimes on points of shipping law, on contracts with Indian railway companies, or on the precise form of an agreement with a newly recruited official or of the bond to be taken from a surety.

Ecclesiastical

The religious neutrality of the British Government in India has been so constantly proclaimed and so steadily observed that ecclesiastical matters might be supposed not to concern the India Office. But Part X of the Government of India Act (Sections 11 to 123) regulates the jurisdiction of (certain) bishops of the Church of England in India, provides for their salaries and those of their archdeacons, sanctions the establishment of chaplains of the Church of Scotland, and enables grants to be made to any other sect, persuasion, or community of Christians for the purpose of instruction or for the maintenance of places of worship. The explanation is that the East India Company, though after the establishment of territorial administration abstaining from any attempt to convert the peoples of India to Christianity, always recognised an obligation, which the Secretary of State has inherited, to provide religious ministration for its own European servants in the East.

The history of the connection of State and Church in India may be said to begin with the mission of Sir Thomas Roe to Jehangir in 1615. King James's Ambassador was accompanied by a chaplain, on whose death he requested the despatch of another, for "Here I cannot live the life of an Atheist." But in 1614 the Company was supporting a chaplain at its Surat factory, to whom it paid the salary of £100 a year. In 1658 the Company, still a mere trading Corporation, and no doubt anxious to obtain a character for respectability, informed the

English Universities that it "has resolved to endeavour the advance and spreading of the Gospel in India." But the assumption of territorial responsibility convinced the Directors that they were not cut out for the career of Crusaders, and considerations at first of prudence and later on of religious toleration led to a deliberate dissociation of the temporal power from missionary effort. The Company has, in fact, been criticised for its alleged hostility to Christian missionaries, some of whom at the end of the eighteenth century had to find their homes in Danish territory in order to work freely. But the opinion of recent historians seems generally to be that the Directors were more friendly to religion than had been supposed. In the Charter granted to the "New" Company in 1698, it was laid down that no ship of over 500 tons should go to the East without a chaplain, and the injunction was repeated in the Charter given to the United Company in 1708. Under the 1708 Charter it was ordered that a minister and a schoolmaster should be maintained in every garrison, while all East Indian chaplains were to be approved by the Archbishop of Canterbury or the Bishop of London, who had licensed a chaplain for India as early as 1685. Two centuries ago Indian chaplains were obliged to face more rigorous linguistic tests than now: they were required to learn Portuguese within a year of arrival and also to "apply themselves to learn the native language of the country where they shall reside." The crop of controversial pamphlets that sprang up about 1858 includes eloquent expositions, from Englishmen who knew India, of the diverse

convictions that the Mutiny was a Divine judgment on the British nation for the failure of its Government to attempt the conversion of Hindus and Moslems, and that it was the inevitable result of our interfering with Indian religious customs.

However this may be, by the end of the eighteenth century the Evangelical movement in England, stimulated by the description of Indian life given in such books as Mrs. Sherwood's "Little Henry and his Bearer," led to pressure on the Company with a view to putting ecclesiastical arrangements in India on a proper basis, and when the Charter was renewed in 1813, the English Church establishment in India was, by what were known as "the pious clauses" of the Act, placed under the superintendence of a bishop and three archdeacons, and adequate provision made for their maintenance from the territorial revenues of India. In 1814 letters patent were issued constituting British India into a Bishop's See, the Bishopric of Calcutta, to be subject and subordinate (with certain specified exceptions as to appeals) to the Archiepiscopal See of Canterbury. Archdeacons, to be commissaries of the Bishop, were established at each of the three Presidency towns. At the same time the Company undertook to maintain two Presbyterian chaplains of the Established Church of Scotland in each Presidency. This statutory minimum of six has in practice been doubled. The ecclesiastical function of the Bishop of Calcutta originally extended not only to Ceylon, but to the Cape of Good Hope and Australia. The Madras bishopric was

constituted in 1835, that of Bombay in 1837, and that of Colombo in 1845.

Thus the somewhat lax arrangements that had existed in the eighteenth century* were reformed. Early chaplains of the Company had on occasion not only show a disposition to engage in trade, but had fallen under suspicion of the even more heinous offence of trafficking with "interlopers." One of the fraternity, the Rev. Robert Palk, developed a *flair* for diplomacy in the Company's business with Indian rulers: a talent which at first scandalised the Directors, but ultimately led to their making him Governor of Madras, so that his name is perpetuated in the straits between India and Ceylon, surveyed under his instructions.

The regular quartering of British troops in India of course enhanced the need for chaplains. The Government of India under the Crown succeeded to the direct and obvious duty of providing for the spiritual needs of the British troops, but how far there is an acknowledged obligation upon Government to provide clergy for its civil employés is a question that cannot be answered so definitely. The clergymen on the State establishment are described in the Government of India Act as "military chaplains," but they are assigned to stations, not to regiments. Government has built many churches, and made grants for upkeep. The consecration for Anglican use exclusively of certain churches built by Government produced, some twenty years ago, an unpleasant controversy. The needs of British

* See "The History of the Church of England in India" by the Right Rev. Eyre Chatterton, Bishop of Nagpur (1924).

soldiers who are neither Anglicans nor Presbyterians are met by a system of capitation grants to Roman Catholic priests and Wesleyan ministers.

The Church of England in India has expanded so greatly that the cadre of Government chaplains is inadequate to meet the needs even of official congregations, and is reinforced by the Additional Clergy Society, with some aid from Government. There are only three "Statutory Bishops," but the creation of new sees was aided by the assignment of senior chaplains' salaries to the Bishops of Lahore and Rangoon (1877), Lucknow (1893) and Nagpur (1903), the balance of their stipends being met by private voluntary contributions and benefactions.

The growth of missionary enterprise has resulted in the formation of many Anglican congregations outside the sphere of Government concern: Government chaplains, appointed and paid by the State, minister only to European congregations. The Bishops, therefore, are in control of two distinct classes of clergy, the Government chaplains and the Anglican missionaries. Several of the Bishops, for instance, the Bishop in (not "of") Tinnevelly and Madura, draw no stipend from Government and exercise no jurisdiction over Government chaplains. The number of Anglican clergy in India has risen from about forty in 1815 to the present figure of about 1,000, of whom not much more than one-tenth are Government chaplains. Roughly one-third of the total number are themselves Indians. In 1912 an Indian clergyman was consecrated bishop of the new missionary see of Dornakal. How far the ecclesiastical law of England extends to India

is a question of great difficulty and complexity: the Church of England is certainly not "established" in India, and yet its bishops are appointed under Letters Patent, seven of them appointed by the Crown on the recommendation of the Secretary of State, and three of them receive stipends provided by Act of Parliament. There has been little objection in the past on the part of Indians to the payment by the State of ministers of the Christian religion employed to provide for its European servants. Religion is deeply interwoven into the mind and character of Indians, who think it right that a man should not be ashamed of his faith, and recognise that the British Government has carefully protected the temple endowments of Hinduism and the pious foundations of Moslems. But the Government grants in aid to Christian missionary schools for the secular instruction that they give to any Indian children who choose to attend have aroused criticism, and it seems probable that a "conscience clause" may be a necessary condition of financial help from the State.

The position of the Church of England in India is, as must be apparent, full of anomalies. It has not that autonomy possessed by its sister branches in Dominions like Australia or South Africa or foreign countries like Japan. The Metropolitan (the Bishop of Calcutta) is at the head of the twelve bishops of the ecclesiastical Province of India and Ceylon, but that Province is in some respects under the direct control of Canterbury, and cannot legally form a duly constituted Synod. The State connection may come to present great difficulties in a country, in which

Christians are a mere fraction of the population, developing constitutionally towards responsible government. The aim of the projected "Church Measure" on which the Anglican bishops in India are agreed is twofold: to sever the connection with the State and to obtain ecclesiastical autonomy. Such a step would necessitate the consent of the parent Church in England, and, as involving some modification of the Government of India Act, the sanction of Parliament. While the destinies of an Anglican "Church of India" must ultimately fall into Indian hands, the British authorities must retain the duty of maintaining for British soldiers religious ministrations identical with those provided for them in England. It is natural enough that English lay opinion in India is not unanimous on the question.

The "ecclesiastical" work of the India Office, however, does not normally rise into such difficult regions: it is concerned with the formalities connected with the appointment of bishops, the regular recruitment of Anglicans and Presbyterians to fill vacancies in the chaplains' establishments, and the administration of the pay, leave and pension rules. The Secretaries of State used to select the Anglican chaplains, but Lord Morley delegated the duty to the Council, which has entrusted the scrutiny of candidates' claims to a special non-official Selection Committee with joint lay and clerical membership appointed by the Archbishop of Canterbury. The Church of Scotland itself, in its presbytery of Edinburgh, selects the chaplains for the Indian service, whose appointment is confirmed by the Secretary of State in Council.