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## **Statute Law Repeals: Consultation Paper British India – Proposed Repeals**

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**SLR 01/12: Closing date for responses – 8 March 2013**

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## THE LAW COMMISSION – HOW WE CONSULT

**About the Law Commission:** The Law Commission for England and Wales was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Lloyd Jones (*Chairman*), Professor Elizabeth Cooke, Mr David Hertzell, Professor David Ormerod and Frances Patterson QC.

The Chief Executive is Elaine Lorimer.

**Topic of this consultation:** The Consultation Paper has been produced by the Law Commission's Statute Law Repeals team. It reviews the statute law relating to British India and proposes the repeal of a number of obsolete Acts.

**Scope of this consultation:** The purpose of this consultation is to generate responses to these proposals.

**Geographical scope:** United Kingdom and former British India.

**Duration of the consultation:** 4 December 2012 to 8 March 2013

### How to respond

Please send your responses either-

**By email to:** [john.saunders@lawcommission.gsi.gov.uk](mailto:john.saunders@lawcommission.gsi.gov.uk) or

**By post to:** John Saunders, Law Commission, Steel House, 11 Tothill Street,  
London SW1H 9LJ  
Tel: 020 3334 0240

If you send your comments by post, it would be helpful if, where possible, you could also send them electronically (for example, by email to the above address, in any commonly used format).

**After the consultation:** In the light of the responses received the Commission will publish its repeal recommendations in its next statute law repeals report. This report is likely to be published in 2016 and will be presented to Parliament. It will be for Parliament to decide whether to implement these recommendations.

**Freedom of information:** It is important that you refer to the Freedom of Information Statement on the next page.

**Availability of this Consultation Paper:** You can view or download the paper free of charge on our website at: <http://lawcommission.justice.gov.uk/consultations/British-India-repeal-proposals.htm>.

**Freedom of Information statement**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000 and the Data Protection Act 1998 (DPA)).

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

## **BACKGROUND NOTES ON STATUTE LAW REPEALS (SLR)**

### **What is it?**

1. Our SLR work involves repealing statutes that are no longer of practical utility. The purpose is to modernise and simplify the statute book, thereby reducing its size and thus saving the time of lawyers and others who use it. This in turn helps to avoid unnecessary costs. It also stops people being misled by obsolete laws that masquerade as live law. If an Act features still in the statute book and is referred to in text books, people reasonably enough assume that it must mean something.

### **Who does it?**

2. Our SLR work is carried out by the Law Commission and the Scottish Law Commission pursuant to section 3(1) of the Law Commissions Act 1965. Section 3(1) imposes a duty on both Commissions to keep the law under review “with a view to its systematic development and reform, including in particular ... the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law”.

### **Statute Law (Repeals) Bill**

3. Implementation of the Commissions’ SLR proposals is by means of special Statute Law (Repeals) Bills. 18 such Bills have been enacted since 1965 repealing more than 2000 whole Acts and achieving partial repeals in thousands of others. Broadly speaking the remit of a Statute Law (Repeals) Bill extends to any enactment passed at Westminster. Accordingly it is capable of repealing obsolete statutory text throughout the United Kingdom (ie England, Wales, Scotland and Northern Ireland) as well as extending where appropriate to the Isle of Man.

### **Consultation**

4. The Law Commission consults widely before finalising its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals. So the consultation may be with central or local government, organisations, trade bodies, individuals or anyone else who appears to have an interest in a proposal.
5. So far as consulting central government is concerned, any Department or agency with an interest in the subject matter of the repeal proposal will be invited to comment. Because obsolete legislation often extends throughout the United Kingdom it may be necessary to invite comments from several different Departments. So the following will routinely be consulted-
  - ◆ The English Department or Departments with policy responsibility for the subject matter of the proposed repeal (this responsibility will extend to Scotland in appropriate cases)
  - ◆ The Welsh Government and the Wales Office (unless the proposed repeal relates only to England)
  - ◆ SLR colleagues at the Scottish Law Commission (if the proposed repeal extends to Scotland)
  - ◆ Northern Ireland officials (if the proposed repeal extends to Northern Ireland).

### **Selection of repeal candidates**

6. Candidates for repeal are selected on the basis that they are no longer of practical utility. Usually this is because they no longer have any legal effect on technical grounds - because they are spent, unnecessary or obsolete. But sometimes they are selected because, although they strictly speaking do continue to have legal effect, the purposes for which they were enacted either no longer exist or are nowadays being met by some other means.
7. Provisions commonly repealed by Statute Law (Repeals) Acts include the following-
  - (a) references to bodies, organisations, etc that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
  - (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (eg legislation about tithes or tin mines);
  - (c) references to Acts that have been superseded by more modern (or EU) legislation or by international convention;
  - (d) references to statutory provisions (ie sections, schedules, orders, etc) that have been repealed;
  - (e) repealing provisions eg "Section 33 is repealed/shall cease to have effect";
  - (f) commencement provisions once the whole of an Act is in force;
  - (g) transitional or savings provisions that are spent;
  - (h) provisions that are self-evidently spent - eg a one-off statutory obligation to do something becomes spent once the required act has duly been done;
  - (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

### *General savings*

8. Much SLR work is possible because of the general savings provisions of section 16(1) of the Interpretation Act 1978. This provides that where an Act repeals an enactment, the repeal does not (unless the contrary intention appears) -
  - “(a) revive anything not in force or existing at the time at which the repeal takes effect;
  - (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed”.

### **Gradual obsolescence**

9. The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete. The Statute Law (Repeals) Act 2008 contained several examples of legislation being overtaken by social and economic changes. A scheme to provide farming work for ex-servicemen after the First World War had long fallen into disuse. Changes in agriculture during the second half of the 20<sup>th</sup> century had greatly reduced the numbers of persons seeking employment in farming. An Act of 1792 that criminalised the giving of false character references to servants seeking domestic employment had become superseded by changes in the civil law. And a Victorian Act requiring noisy street musicians to leave the area on pain of a forty shilling fine had long become obsolete.
10. Even within individual statutes, the obsolescence tends to be gradual. Some provisions fade away more quickly than others. These include commencement and transitory provisions and ‘pump-priming’ provisions (eg initial funding and initial appointments to a Committee) to implement the new legislation. Next to go may be order-making powers that are no longer needed. Then the Committee established by the Act no longer meets and can be abolished. However, other provisions may be unrepealable for generations, particularly if they confer pensions rights or confer security of tenure or employment rights. Other provisions may be virtually unrepealable ever. Much of English property law relies on medieval statutes such as Quia Emptores (1290) which is regarded as one of the pillars of the law of real property. This last example usefully shows that just because a statute is ancient it is not necessarily obsolete.

### **Help from consultees**

11. Sometimes it is impossible to tell whether a provision is repealable without factual information that is not readily ascertainable without ‘inside’ knowledge of a Department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the repeal notes drafted by the Law Commissions often invite the organisation being consulted to supply the necessary information. Any help that can be given to fill in the gaps is much appreciated.

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# BRITISH INDIA PROPOSALS

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# BRITISH INDIA

## Acts (various) 1838 to 1909

### Introduction

1. This consultation paper contains nine parts (embracing 24 Acts). It deals - in the main - with legislation which enabled companies in the Victorian era to be established and to operate various commercial undertakings in, or in connection with, British India.<sup>1</sup>

2. The paper represents the third phase of the Law Commission's endeavour to review statute law relating to the Indian subcontinent which remains on the UK statute book after India, Pakistan (and later Bangladesh), Ceylon (subsequently Sri Lanka) and Burma (Myanmar) achieved independence and sovereign status.<sup>2</sup>

3. The first phase of the project tackled the last remaining statutes relating to the former East India Company. The Company had been formed by royal charter in 1600, and operated until dissolution in 1874, losing much of its power and prestige following the Sepoy Rebellion of 1857.<sup>3</sup> A dozen Acts were repealed by Parliament through the *Statute Law (Repeals) Act 2008 (c.12)*.

4. The second phase of the British India project centred on the Indian railway system and, more particularly, the statutory arrangements under which the East India Company (and later the government of India) and private entrepreneurs jointly built up a substantial rail network stretching across the subcontinent. Some 38 railway Acts are - at the time of writing - being considered by Parliament for repeal in the *Statute Law (Repeals) Bill 2012*.

5. This third and final phase focuses on the following areas -

- Anglo-Indian bank companies which, from the 1860s onwards, were forced through economic circumstances either to go into liquidation or to rationalise and to merge with other banking operations

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<sup>1</sup> The expression "British India" meant all territories and places within Her Majesty's dominions which were governed by the Queen through the governor-general of India, and excluded those territories which were then ruled by any native prince or chief under the suzerainty of the Queen exercised through the governor-general: see definitions in the Interpretation Act 1889 (c.63), s 18 (which Act is now repealed and superseded).

<sup>2</sup> Independence was granted to India (and Pakistan was formed as a separate Dominion) by the India Independence Act 1947 (c.30).

<sup>3</sup> The Crown (and British government) asserted its authority over the Company by assuming direct governance of British India in 1858.

- Anglo-Indian telegraph companies, which were created to facilitate the construction of telegraphic links from Britain, via mainland Europe, to India and the Far East
- Assam companies, which existed to cultivate and process tea and which underwent various financial restructurings
- The East India Coal Company, which was empowered to work collieries and mines in conjunction with the government of India, prior to its being wound up in the late 1860s
- The India Office, which required specific legislation to acquire land and to build its offices off Whitehall in London
- The India Steam Ship Company, which was formed to transport passengers and cargoes between the UK and British India (and beyond, for example, to Australia)
- Indian Railways annuities, required in connection with sinking funds that had been put in place to facilitate the nationalisation by the government of India of a number of private railway companies
- The Liverpool East India Warehouse Company, which needed additional powers to progress its business as warehouse keeper
- The Madras and East India irrigation and canal companies, which were created to build and maintain a network of canals and waterways for transportation and irrigation purposes (the Toombuddra and the Orissa projects).

6. For the reasons set out in the following notes each of the statutory bases underpinning the various endeavours is now spent. So far as the states of India, Pakistan and Bangladesh are concerned, repeal will not impact on any jurisdiction outside the United Kingdom.

November 2012

## ANGLO-INDIAN BANK COMPANIES

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<i>Reference</i>	<i>Extent of repeal</i>
Agra and Masterman's Bank (Limited) Act 1865 (28 & 29 Vict. c.xcii)	The whole Act.
Mercantile Bank of India (Limited) Act 1893 (56 & 57 Vict. c.xxi)	The whole Act.

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### **Agra and Masterman's Bank**

1. The Agra and Masterman's Bank was the product of an 1864 amalgamation between the former Agra and United Service Bank (which had been incorporated in 1857)<sup>4</sup> and the London-based banking partnership of Masterman, Peters, Mildred and Company. The former took over the latter in order to achieve beneficial membership of the London Clearing House.<sup>5</sup>

2. The 1860s, however, were a period of economic turbulence in Britain. Bank failure became endemic. The Agra and Masterman's Bank had deposited reserves with Overend, Gurney and Company, who specialised in investment and discounting bills of exchange. Overend Gurney overstretched itself and in 1866 collapsed after trying to reconstitute itself.<sup>6</sup> The repercussions for various banks in the City of London were substantial. Amongst others the Bank of London, the Consolidated Bank and the Agra and Masterman's Bank ceased to be viable.

3. In November 1866 the Agra and Masterman's Bank gave notice that it was seeking a Bill authorising transfer of a proportion of its undertaking to a new incorporated entity, the Agra Bank Limited, and the formal winding-up (through the

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<sup>4</sup> The Agra and United Service Bank Ltd. had been established by deed of settlement in January 1857 and incorporated by royal charter in May 1857: see preamble to the Act 28 & 29 Vict. c.xcii (1865), discussed below. Agra was the former capital of Hindustan (on the river Yamuna), now situate in Uttar Pradesh in India, some 200 km south of New Delhi.

<sup>5</sup> See Sally Miller, *Studies in the Economic History of the Pacific Rim* (1998, Routledge), p 136.

<sup>6</sup> See John Marriott, *Beyond the Tower: A History of East London* (2011).

Court of Chancery) of the existing company.<sup>7</sup> By 1901, however, the reconfigured Agra Bank Ltd was itself in liquidation.<sup>8</sup>

### ***Agra and Masterman's Bank (Limited) Act 1865***

4. The bank's original capital ceiling - set in 1857 - had been £2 million, divided into 20,000 £100 shares. By 1865 all the shares had been taken up, and each share was 50% paid up. However, because the banking company was still regulated in accordance with joint stock banks legislation in force as at 1857,<sup>9</sup> it lacked the option to fix share prices at less than £100 value. After 1862 the company increased its capital to £3 million by creating a further 20,000 shares at £50 each. Again, all the share issue had been taken up, and each new share was 50% paid up. In order to place all of its shares on the same footing, the company required additional parliamentary authority.

5. The *Agra and Masterman's Bank (Limited) Act 1865*<sup>10</sup> provided that -
- (a) the banking company could, subject to approval by a 75% vote of its shareholders at a specially convened meeting, and with Board of Trade sanction, divide each of the original £100 shares into two £50 shares and issue appropriate replacement share certificates<sup>11</sup>
  - (b) each new £50 share would be deemed to have the same call-up value as the £100 share it replaced,<sup>12</sup> and
  - (c) for all calls on shares, and all company voting, two of the converted £50 shares were to be deemed a £100 share.<sup>13</sup>

### **Mercantile Bank of India**

6. The Mercantile Bank of Bombay was formed in November 1853, and in 1857 was granted a royal charter.<sup>14</sup> By 1858 the bank had established offices not only in

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<sup>7</sup> Notice in *The London Gazette* 30 November 1866 (no 23192), pp 6695-6 (referring to the parliamentary session for 1867). It was not until 1902 that the moribund Agra and Masterman's Bank Ltd was removed from the register of joint stock companies and formally dissolved: see notice in *The London Gazette* 24 January 1902, p 524.

<sup>8</sup> Notice given in *The London Gazette* 27 December 1901, p 9154.

<sup>9</sup> 7 & 8 Vict. c.113 (1844): see preamble to 28 & 29 Vict. c.xcii (1865), below. By 1865 this 1844 Act had been superseded by the Companies Act 1862 which gave latitude to banking companies to fix share prices at any amount they saw fit.

<sup>10</sup> 28 & 29 Vict. c.xcii (1865) ("the 1865 Act"). The short title to the Act for citation and other purposes was given by section 1.

<sup>11</sup> The 1865 Act, ss 2, 3.

<sup>12</sup> The 1865 Act, s 4. By section 5 any instrument (including a will) purporting to effect disposal of a £100 share was to operate as if the share had been divided into two £50 shares.

<sup>13</sup> The 1865 Act, s 6. By section 7 the converted £50 shares were deemed to have been shares created under the Companies Act 1862.

<sup>14</sup> In 1854 the bank's head office was in Bombay, and a branch office had opened in Madras. Between 1854 and 1923 the Madras branch occupied four different sets of offices, concluding with its own

India but also in Shanghai and Hong Kong, with its head office in London. It was renamed the Mercantile Bank of India, London and China.<sup>15</sup>

7. Financial difficulties caused the banking company to lose its charter status in 1893. In anticipation of that loss, in December 1892 the bank became incorporated under the Companies Acts 1862-90 as a company limited by shares. It was renamed the Mercantile Bank of India Limited. The Second World War impacted adversely on the bank's Far East operations which, subsequently, were partially restored. In 1959 the Mercantile Bank of India Ltd (which had then become simply Mercantile Bank Ltd) was acquired by the Hongkong and Shanghai Banking Corporation (HSBC). HSBC retained the Bombay (Mumbai) office as its Indian headquarters, and later sold its Mercantile Bank interests to Citibank (in 1984) and the Bank of Tokyo-Mitsubishi (in 1987).<sup>16</sup>

#### ***Mercantile Bank of India (Limited) Act 1893***

8. The memorandum and articles of association of the Mercantile Bank of India Ltd set out the company's objects, which included the power to "carry on in India and elsewhere" a range of banking business. They also provided that the company's capital was to be £1.5 million, divided into 60,000 £25 shares which could be subdivided into different share classes. 25% of each share (£6 5s) was to be treated as "reserved capital" which would not be called up except on the company being wound up. Half of the shares (30,000) were to be classified as A shares, and the remainder as B shares.<sup>17</sup>

9. By 1893 15,000 of the A shares had been issued, and 30,000 B shares had been set apart for issue. However, at that stage "doubts [had] arisen" as to whether the company was empowered to issue shares expressed in rupees or dollars as well as in pounds sterling. Resolution of the doubts required parliamentary authority.

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Mercantile Bank Buildings (at First Line Beach): see Madras Tercentenary Celebration Committee, *The Madras Tercentenary Commemoration Volume* (1939).

<sup>15</sup> See *Mercantile Bank of India, London and China – eNotes.com Reference* at [http://www.enotes.com/topic/Mercantile\\_Bank\\_of\\_India,\\_London\\_and\\_China](http://www.enotes.com/topic/Mercantile_Bank_of_India,_London_and_China) (accessed 16 August 2012).

<sup>16</sup> See *eNotes.com Reference*, above.

<sup>17</sup> See preamble to 56 & 57 Vict. c.xxi (1893), discussed below. The preamble set out parts of clauses 3, 5 and 6 of the company's memorandum of association, and clause 9 of the company's articles. The A shares were to be treated as preferential both in terms of dividend distribution and - in the event of winding up - capital distribution.

10. The *Mercantile Bank of India (Limited) Act 1893*<sup>18</sup> permitted the company to create “silver capital”, expressed in rupees or dollars, in substitution for an equivalent amount of unissued capital (excepting the B shares). The capital was to be divided into shares and would carry “such rights privileges qualifications and conditions” as the company determined.<sup>19</sup> Additionally -

- (a) the sterling equivalent of any silver capital shares or stock issued was to be entered on the company’s balance sheets<sup>20</sup>
- (b) clause 6 of the company’s memorandum (which provided for the setting aside of reserved capital) was disappplied for silver capital, subject to retaining the 25% exemption from call-up for issued shares<sup>21</sup>
- (c) separate registers were to be maintained for the holders of silver shares or stock expressed in rupees or dollars,<sup>22</sup> and
- (d) the company was required to lodge a copy of the 1893 Act with the registrar of joint stock companies.<sup>23</sup>

#### *Status of the Acts*

11. The 1865 Act was designed to enable the Agra and Masterman’s Bank to rationalise its share issue arrangements. However, by two stages - 1867 and 1902 - the bank’s undertaking was wound up. On that basis the purpose underlying the 1865 Act has long ceased to have value, and the 1865 Act itself is now obsolete.

12. The 1893 Act similarly had a limited purpose in connection with the Mercantile Bank of India, in that it permitted the bank to create capital in alternative denominations (rupees and dollars as well as in pounds sterling). In 1959 the bank lost its separate identity as a result of its merger within what today is HSBC, and subsequently interests within the former bank were sold on elsewhere. As a consequence there is no practical need now for the 1893 Act.

#### *Extent*

13. The 1865 Act is silent as to its territorial extent. Given the nature of the Agra and Masterman’s Bank’s operations, the Act probably extended to the United Kingdom (then including the whole of Ireland) and to British India (as then defined).

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<sup>18</sup> 56 & 57 Vict. c.xxi (1893) (“the 1893 Act”). The short title to the Act was assigned by section 1.

<sup>19</sup> The 1893 Act, s 2. By section 7 nothing in the 1893 Act was to validate or invalidate any proceedings which may have been pending at the date of the Act’s passing.

<sup>20</sup> The 1893 Act, s 3.

<sup>21</sup> The 1893 Act, s 4.

<sup>22</sup> The 1893 Act, s 5. The shares and stock entered in one register were not transferable to any other register of the company.

<sup>23</sup> The 1893 Act, s 6.

14. The 1893 Act likewise does not speak of its extent. The Mercantile Bank of India had its principal offices in London and Bombay (Mumbai). As a consequence the Act extended to the United Kingdom (including Ireland) and to India.

*Consultation*

15. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, Companies House, the British Bankers Association, HSBC plc, the High Commissions for India, Pakistan and Bangladesh, the Ministry of Law and Justice (Government of India), and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposals set out in this note.

32-195-50  
LAW/005/032/06  
November 2012

## ANGLO-INDIAN TELEGRAPH COMPANIES

<i>Reference</i>	<i>Extent of repeal</i>
European and Indian Junction Telegraph Act 1857 (20 & 21 Vict. c.xc)	The whole Act.
Red Sea and India Telegraph Act 1859 (22 & 23 Vict. c.iv)	The whole Act.
India Rubber, Gutta Percha and Telegraph Works Company (Limited) Act 1884 (47 & 48 Vict. c.ci)	The whole Act.
India Rubber, Gutta Percha and Telegraph Works Company (Limited) Act 1903 (3 Edw.7 c.xxvi)	The whole Act.

### *Background*

1. In 1856 the Brett brothers registered the **European and Indian Junction Telegraph Company** (“the European company”) as a joint stock company for the purpose of constructing a telegraph link between Seleucia Pieria (on the Mediterranean coast) and the Persian Gulf, via the Euphrates Valley. That link would facilitate communication between the telegraph networks of Europe (including Britain) and those of the East India Company (through to Kurrachee, now Karachi in Pakistan).

2. The European company’s intended link became the British government’s preferred scheme (underpinned by a preliminary agreement signed in February 1857).<sup>24</sup> The European company was incorporated later that year (in July) through the *European and Indian Junction Telegraph Act 1857*.<sup>25</sup>

<sup>24</sup> An alternative scheme was proposed by Lionel and Francis Gisborne, who had already (in 1855) secured exclusive concessions from the Ottoman Turkish and Egyptian governments to lay cables through Egypt and down the Red Sea (a different route). Although unsuccessful in the original bidding process Lionel Gisborne’s Red Sea and India Telegraph Company did secure governmental backing in November 1858 when the European and Indian Junction Telegraph Company failed in its endeavour. In 1860 the Gisborne project also collapsed, for engineering reasons involving cable failure rather than monetary factors. See generally Daniel R. Headrick, *The Invisible Weapon: Telecommunications and International Politics, 1851-1945* (Oxford UP, 1991) at pp 19, 20.

<sup>25</sup> 20 & 21 Vict. c.xc (1857).



3. In September 1857, however, the Ottoman government rejected the Brett application for a concession to run cables through its territory (principally on the ground that the enterprise was British government-owned). Instead, the Ottoman government decided to construct its own telegraph link from Constantinople to the Persian Gulf *via* Scutari (now Uskudar), Mosul and Bussorah (now Basra).<sup>26</sup> This spelt the end of the European and Indian Junction Telegraph Company and its aspirations. The European company was dissolved.

4. In November 1858 the British Treasury, still anxious to effect a direct telegraph link with India, signed an agreement with the newly formed **Red Sea and India Telegraph Company Ltd** (“the Red Sea company”)<sup>27</sup> whereby the Treasury would guarantee that the net receipts of the company available for dividend would equate to interest at 4.5% p.a. on the paid-up capital. The Treasury would make up any deficit where net receipts fell below 2.25% p.a.<sup>28</sup> All amounts paid out by the Treasury were to be a charge on the company’s assets, repayable out of future profits.

5. By the following year all the Red Sea company’s capital (40,000 £20 shares) had been subscribed. Under the November 1858 agreement the company undertook to lay an electric telegraph line from Alexandria to Kurrachee via the Red Sea and Aden. Because the undertaking was “one of great public and national importance”, and the works had to be executed with the minimum of delay, a new incorporated company - with adequate works powers - needed to be substituted for the original Red Sea company.<sup>29</sup> This required parliamentary authority, provided by the *Red Sea and India Telegraph Act 1859*.<sup>30</sup>

6. Between May 1859 and February 1860 the cable contractor laid the cable in sections (and subjected it to 30-day testing). But by March 1860, because of the means of underwater laying adopted, and the thinness of the cable used, five of the

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<sup>26</sup> See Steven Roberts, *A History of the Telegraph Companies in Britain between 1838 and 1868*, ch 13 (accessed at <http://distantwriting.co.uk/companiesandforeigntraffic.html> on 2 July 2012).

<sup>27</sup> The company had been formed by Lionel Gisborne as a joint stock company in July 1858, registered in London, with the purpose of establishing telegraphic communication between England and India via the Red Sea.

<sup>28</sup> See the preamble to the Red Sea and India Telegraph Act 1861 (24 & 25 Vict. c.4), repealed in 1875. The guarantee under the November 1858 agreement was to last for 50 years from August 1858. The Red Sea company’s capital was not to exceed £800,000.

<sup>29</sup> See preamble to 22 & 23 Vict. c.iv (1859), discussed below.

<sup>30</sup> 22 & 23 Vict. c.iv (1859).

six sections had broken or rusted through. No telegraphs could be transmitted from Karachi (or Bombay) to Suez.<sup>31</sup>

7. Notwithstanding this failure parliament passed the *Red Sea and India Telegraph Act 1861*,<sup>32</sup> which put beyond doubt the Treasury's ability, under the 1858 agreement, to honour the guarantee arrangement, whether or not the telegraph line was in "working order".<sup>33</sup> On this basis the government guarantee (subsequently converted into an annuity of £36,000 payable for 46 years) became an absolute obligation.<sup>34</sup>

8. In 1862, because the telegraph line had "ceased to transmit messages", the Treasury entered into an agreement with the Red Sea company and a new company, the Telegraph to India Company Ltd, under which the Red Sea company would transfer all its assets to the new company.<sup>35</sup> The agreement required statutory ratification. The *Red Sea and India Telegraph Company Act 1862*<sup>36</sup> provided authorisation for the transfer and for charging the annuity on the consolidated fund.<sup>37</sup> Under the agreement the new company was to use its "best endeavours to repair and restore the whole line from Suez to Kurrachee" and, in the event of further failure, the Treasury reserved the right to take back the operation.<sup>38</sup>

9. The enterprise was not a success (the submarine cables were found to be irreparable) and it was soon abandoned by government,<sup>39</sup> although the annuity payment continued to be made. Direct communication to India had to await the Persian Gulf cable installation in 1864.<sup>40</sup>

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<sup>31</sup> See Daniel R. Headrick, *The Invisible Weapon: Telecommunications and International Politics, 1851-1945* (Oxford UP, 1991), at pp 19, 20.

<sup>32</sup> 24 & 25 Vict. c.4 (1861) ("the 1861 Act"). The Act - which was repealed in 1875 - was very short, comprising a preamble and two sections.

<sup>33</sup> The 1861 Act, s 1.

<sup>34</sup> See Hansard for committee debate on the issue: HC Deb 31 March 1862 vol 166 cc325-7. The original intention was that the annuity would be £32,000 payable for 50 years. Although generous - given that it was compensation for a non-functioning cable system - government saw this as the only means by which it could retrieve control of the infrastructure.

<sup>35</sup> See 25 & 26 Vict. c.39 (1862), below. The heads of agreement were referred to in the preamble to the Act and were recited in the Schedule.

<sup>36</sup> 25 & 26 Vict. c.39 (1862) ("the 1862 Act"), repealed in 1950.

<sup>37</sup> The annuity was to run from August 1862 to August 1908, and the revenues of India were to make a 50% contribution to the annual payments: the 1862 Act, ss 3, 7. By section 6 the Treasury could redeem the annuity by payment of a capital sum.

<sup>38</sup> The 1862 Act, Sch pt 2 paras 2, 7.

<sup>39</sup> The portion of line overland from Alexandria to Suez did function.

<sup>40</sup> See *History of the Atlantic Cable and Undersea Communications (1859 Suez-Aden-Karachi Cable)* at <http://atlantic-cable.com/Cables/1859SuezKarachi/index.htm> (last accessed on 5 July 2012). See also the detailed work by Steven Roberts, *Distant Writing: A history of the telegraph companies in Britain between 1838 and 1868* at ch 13 (The Companies Abroad), available at <http://distantwriting.co.uk/companiesandforeigntraffic.html> (last accessed on 2 July 2012).

10. Telegraph operations - particularly when laid under water - relied very much on the quality of cable employed. From the 1850s onwards specialist cable manufacturers came into being in order to supply the telegraph market with insulated telegraph wire. One such manufacturer was the **India Rubber, Gutta Percha and Telegraph Works Company** ("the Gutta Percha company") which diversified from the manufacture of rubber waterproof clothing (based initially at Greenwich, then in Kent) to the manufacture of gutta percha<sup>41</sup> and of copper-core insulated telegraph cable at its new factory site in Silvertown<sup>42</sup> in West Ham. It also became involved in the laying of cable (by special steamers) off the west coast of America, in South America and Panama, and along the west coast of Africa.

11. In 1862 S.W. Silver junior and his brother Col. H.A. Silver, in association with Charles Hancock (who had experience of cable manufacture), took out a patent for waterproofing and insulating materials. In 1864 the Silvers established the Gutta Percha company,<sup>43</sup> which then ran the Silvertown factory complex, and took over the West Ham Gutta Percha Company (owned by Hancock).<sup>44</sup> In 1884 the Gutta Percha company broadened its statutory objects through the *India Rubber, Gutta Percha and Telegraph Works Company (Limited) Act 1884*.<sup>45</sup> From then until about 1927 the company excelled in the production of submarine cable and marine equipment,<sup>46</sup> but from 1927 onwards it started to experience financial difficulties. In 1933 the British Goodrich Rubber Company bought a controlling interest in the Gutta Percha company and, by 1934, control of both companies had passed to the British Tyre and Rubber Company (later BTR). In 1955 the company - now a wholly-owned subsidiary of its parent organisation - was renamed the Silvertown Rubber Company.

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Communication means of a different sort also made progress during the decade: in November 1869 the Suez Canal opened for maritime traffic.

<sup>41</sup> Gutta percha is a latex-based material used as an alternative to rubber to provide insulation for electrical products.

<sup>42</sup> Silvertown derives from the name of the Silver family who first operated as S.W. Silver & Co. The relocated factory opened around 1852.

<sup>43</sup> The Gutta Percha company was established initially as Silver's India Rubber Works and Telegraph Cable Co. Ltd by memorandum of March 1864. The company headquarters were at 106 Cannon Street, London EC.

<sup>44</sup> See generally *West Ham - Industries: A History of the County of Essex: Vol 6* (at pp 76-89) at British History Online <http://www.british-history.ac.uk/report.aspx?compid=42755> (last accessed 14 August 2012); *History of the Atlantic Cable & Submarine Telegraphy - British Cable Manufacturers* at <http://atlantic-cable.com/CableCos/BritishMfrs/index.htm#irgp> (last accessed 9 August 2012).

<sup>45</sup> 47 & 48 Vict. c.ci (1884), discussed later in this note.

<sup>46</sup> See, for example, article in *The Telegraphist* 1 April 1887 which describes the company's operations, its four steam ships (used for international cable laying), and its range of telegraph instruments and apparatus manufactured for various governments (at <http://atlantic-cable.com/CableCos/Silvertown/index.htm>, last accessed 8 August 2012).

12. In 1965, following a corporate reorganisation, and the cessation of rubber tyre manufacture, BTR sold the Silvertown works (the site of which was later redeveloped as the Thameside industrial estate).<sup>47</sup> The Gutta Percha company as an entity became moribund.

### ***European and Indian Junction Telegraph Company***

13. The European company - which had a nominal capital of £200,000<sup>48</sup> - promoted what was to become the *European and Indian Junction Telegraph Act 1857*<sup>49</sup> so that it could be formally incorporated, and act in the stead of the original company. The company's purpose was identified as laying down and using wires for telegraphic communication between the continent of Europe and British India, "commencing at or near the port of Seleucia on the coast of Syria, and terminating at Bussorah, or some other point at the head of the Persian Gulf".<sup>50</sup> The undertaking was described as "one of great public and national importance".<sup>51</sup>

14. The 1857 Act provided (in broad terms) that -

- (a) the original company should cease to exist, and that it should be succeeded by an incorporated telegraph company (operating in Great Britain and elsewhere) with the same statutory purposes<sup>52</sup>
- (b) parts of the Joint Stock Companies Act 1856<sup>53</sup> should cease to apply to the successor company, and certain provisions within the Companies Clauses Consolidation Act 1845<sup>54</sup> should form part of the 1857 Act (and bind the new company)<sup>55</sup>
- (c) the original company's property, assets and books were automatically to vest in the successor company, and all contracts owned and liabilities

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<sup>47</sup> See *Grace's Guide* at [http://www.gracesguide.co.uk/India\\_Rubber,\\_Gutta\\_Percha\\_and\\_Telegraph\\_Works\\_Co](http://www.gracesguide.co.uk/India_Rubber,_Gutta_Percha_and_Telegraph_Works_Co) (last accessed 8 August 2012).

<sup>48</sup> The capital was divided into 20,000 £10 shares.

<sup>49</sup> 20 & 21 Vict. c.xc (1857) ("the 1857 Act"). The short title to the Act was given in section 1.

<sup>50</sup> Preamble to the 1857 Act.

<sup>51</sup> Preamble to the 1857 Act. By section 20 of the Act the successor company's principal office was to be located in London. Any public notice which had to be given under the Act was to be placed in a daily newspaper published in London or Middlesex: the 1857 Act, s 45.

<sup>52</sup> The 1857 Act, ss 3, 4. By sections 7 to 9 any legal proceedings or rights of action affecting the original company were to be saved, and all previous company resolutions were to remain binding on the successor company, its directors, officers and "servants".

<sup>53</sup> 19 & 20 Vict. c.47 (1856).

<sup>54</sup> 8 & 9 Vict. c.16 (1845). Provisions to apply included those relating to distribution of capital, transfer of shares, remedies of creditors against shareholders, company general meetings, powers and liabilities of directors, and making of dividends (amongst other matters).

<sup>55</sup> The 1857 Act, ss 3, 5.

- accrued by the original company were to pass to the successor company<sup>56</sup>
- (d) existing officers of the company were to hand over all moneys and papers held prior to incorporation, although their roles would continue in the successor company, subject to ongoing liability of their sureties<sup>57</sup>
  - (e) the successor company's capital was initially fixed at £200,000, comprising 20,000 £10 shares, with power to increase the capital (by special resolution in general meeting) to £500,000. Existing shareholders were automatically to become shareholders in the successor company on a like-for-like basis<sup>58</sup>
  - (f) general meetings of shareholders were to be held twice a year, from August 1857 onwards, with provision for quorum and proxy voting<sup>59</sup>
  - (g) a framework be put in place for directors of the successor company, governing their number, qualification, appointment (all appointments had to be approved by HM Treasury), remuneration, meetings, powers and so forth<sup>60</sup>
  - (h) the successor company could enter into contracts with foreign governments, the East India Company (acting for the Government of India),<sup>61</sup> and other bodies for the purposes of surveying, laying telegraph cables, maintaining and using such systems within their territories, and setting user tariffs, and with other electric telegraph companies for arranging overland and submarine onward transmission of "messages and intelligence"<sup>62</sup>

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<sup>56</sup> The 1857 Act, s 6.

<sup>57</sup> The 1857 Act, ss 10, 11.

<sup>58</sup> The 1857 Act, ss 12-15. By section 16 the successor company was also permitted to borrow on bond, to a ceiling of one-third of the existing capital.

<sup>59</sup> The 1857 Act, ss 17-19.

<sup>60</sup> The 1857 Act, ss 21-32. Section 27 provided for the appointment by HM Treasury's Lords Commissioners of an *ex officio* director to the board who would represent the interests of government and the East India Company (and the wider public) in ensuring that the successor company properly fulfilled its electric telegraph contracts. The appointed director was to be empowered to veto actions by the company where he believed the consequence would be to prejudice the company's contracts or be "otherwise disadvantageous to the public"; the matter would then be decided by the Lords Commissioners, subject to a right of final appeal by the company to two judges of the Westminster courts: the 1857 Act, s 30.

<sup>61</sup> The transfer to Her Majesty of the government of the territories then under the control of the East India Company (held in trust for Her Majesty) was effected by the Government of India Act 1858 (21 & 22 Vict. c.106), operative - once proclaimed in the several presidencies and governments of India - from 1 September 1858. At the time of passing of the 1857 Act, in July 1857, the East India Company still held significant power in India.

<sup>62</sup> The 1857 Act, ss 33, 34. By section 35 the company was also empowered to purchase patent licences for the use of telegraph and signalling inventions, improvements and additions.

- (i) provision be made for various operational aspects of the telegraph service,<sup>63</sup> and
- (j) the transmitting of governmental “intelligence” was to be given preference during “all reasonable times”,<sup>64</sup> and the Treasury was empowered, on behalf of government, to enter into agreements with the successor company setting tariffs of charges for transmission.<sup>65</sup>

### ***Red Sea and India Telegraph Company***

15. The Red Sea and India Telegraph Company Ltd was formed as a joint stock company in July 1858 (under the Joint Stock Companies Act 1856) with the object of establishing a telegraphic communication link between England and India by the Red Sea. The company’s nominal capital was £800,000 (divided into 40,000 £20 shares). By 1859 all the shares had been issued.

16. In November 1858 the company had entered into an agreement with the Treasury whereby the company undertook to lay an electric telegraph line from Alexandria to Kurrachee, via the Red Sea and Aden. In order that the project could be expedited the company needed to be incorporated and to acquire additional powers. The *Red Sea and India Telegraph Act 1859*<sup>66</sup> provided (in broad terms) that-

- (a) the former company was, from July 1859, to cease to exist; the present shareholders were to become shareholders in the new incorporated Red Sea and India Telegraph Company; and all existing property held by the former company was to be vested automatically in the new company<sup>67</sup>

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<sup>63</sup> The 1857 Act, ss 36-38. These included charging for telegraph traffic through the company’s own lines and those of other companies (for onward transmission), and the availability of the system to all public users.

<sup>64</sup> The 1857 Act, ss 39, 40. Where messages or signals were to be sent to or from Her Majesty or His Imperial Majesty the Sultan or the East India Company or their respective services those transmissions were to have priority, and other transmissions were to be suspended temporarily.

<sup>65</sup> The 1857 Act, ss 41-43. The Treasury was to act on behalf of all government departments and the various governments in India. The charges were to include a “minimum annual payment” for line use. In default of agreement the successor company was entitled to receive such “reasonable remuneration” as was determined by arbitration. By section 44 where any employee of the company wilfully or negligently failed to transit a message properly they would be liable to a forfeit, to a maximum of £20.

<sup>66</sup> 22 & 23 Vict. c.iv (1859) (“the 1859 Act”). The short title to the Act was given by section 1. “India” in the context of the Act was to mean “the territories vested in Her Majesty by the Act 21 and 22 Victoria, chapter 106 [Government of India Act 1858]”, and the Act was to apply to the company in India as well as in England (together with the Companies Clauses Consolidation Act 1845): the 1859 Act, ss 2, 3.

<sup>67</sup> The 1859 Act, ss 4-6. Similarly, all previous contracts were to be binding on the new company, any continuing litigation was to continue uninterrupted (and any existing rights of action preserved), all share certificates and transfers were to remain in force, and all rights and liabilities relating to the former company were to pass to the new company: sections 7-10, 13. By section 24 the corporate domicile of the new company was to be in London. And by section 41 the new company’s undertaking was defined as “the constructing and laying down of one or more submarine telegraphic cables or wires, or other telegraphic communication, between Alexandria or some other place in Egypt and India by way of the Red Sea, and, if ultimately thought desirable, between Great Britain and India by the same or such other

- (b) all officers of the former company were to account for and hand over all moneys, papers and books to the new company, and all such officers were to have continuing employment rights with that company<sup>68</sup>
- (c) the new company's capital was initially to be £800,000 (made up of 40,000 £20 shares), with power to extend that sum to a total of £1.5 million (supplemented by additional £20 shares)<sup>69</sup>
- (d) general meetings of the new company were to be held and conducted in accordance with the rubric laid down by the Act<sup>70</sup>
- (e) directors of the new company could number from six to 14, subject to their being qualified by holding £1,000 worth of shares, and the Treasury could appoint two *ex officio* directors with power to veto board decisions which they believed "disadvantageous" to the government or the public, or which might interfere with government contracts or the proper transmission of messages for the public<sup>71</sup>
- (f) the new company could appoint committees "in India or elsewhere" to oversee the laying and working of telegraphic cables and telegraph lines and generally "the control and conduct of any of the affairs" of the company<sup>72</sup>
- (g) the new company be empowered to cut channels in the shoreline around India below high-water mark, and to lay cables and apparatus marked by buoys, subject to paying compensation for any damage caused<sup>73</sup>

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routes as may be deemed advisable" and the working of the telegraph lines for "the transmission of messages". Nothing in the Act purported, though, to give the new company any telegraphic communication monopoly: the 1859 Act, s 69.

<sup>68</sup> The 1859 Act, ss 11, 12.

<sup>69</sup> The 1859 Act, ss 14, 16. By section 15 existing shareholders were to become like-for-like shareholders in the new company. Where additional share capital was created it was to be treated as part of the new company's general capital, but within the company's books it was to be accounted for separately from the initial guaranteed capital: sections 17, 18.

<sup>70</sup> The 1859 Act, ss 19-23. Ordinary meetings of the company were to be held annually (in February) in London; EGMs could be called by a minimum of ten shareholders; and a quorum was to be 20 shareholders, holding shares worth at least £50,000.

<sup>71</sup> The 1859 Act, ss 25, 26, 32, 34, 35 and 36. By sections 28, 29 the directors could set up committees, but were required to fulfil quorum limits. They were empowered to appoint an auditor (subject to the qualification of his holding £200 worth of shares) and - with the auditor - to be remunerated (subject to approval by general meeting and by the Treasury): the 1859 Act, ss 30, 31.

<sup>72</sup> The 1859 Act, s 37. The Act provided for the regulation of such committees (including quorums), and the validity and lawfulness of their proceedings: sections 38 to 40. By section 45 the company was empowered to enter into arrangements with other telegraph companies in England or India for the "onward transmission of messages and intelligence" and to apportion the rates and charges payable; and by section 46 the company could obtain licences to use inventions and improvements under patent relating to the transmission of electric signals.

<sup>73</sup> The 1859 Act, s 42. In England the company's right to undertake works was more restricted. In the City of London no works involving digging up land or pavements were to take place without the prior consent of the City's commissioners of sewers, and any works in connection with the River Thames or its tow path were to be approved by the Thames conservators: sections 43, 44.

- (h) the new company could charge for use of its telegraph lines and those of other companies where onward transmission was required, subject to ensuring that the lines were open and available for public use ordinarily and for government use as a priority,<sup>74</sup> and
- (i) the new company be able to put in place byelaws in India (to be approved by the local government), and that penalties be laid down for wilful neglect by company officers and for wilful damage to company telegraph apparatus.<sup>75</sup>

### ***India Rubber, Gutta Percha and Telegraph Works Company***

17. The Gutta Percha company had been formed in March 1864, initially as Silver's India Rubber Works and Telegraph Cable Company Limited (a joint stock company). It had taken over the business and assets of the former firm Silver & Co (run by Messrs S.W. and H.A. Silver). The firm had premises in Silvertown, manufacturing products made from india rubber, various gums and ebonite. By special resolution, in July 1864, the new company changed its name to the India Rubber Gutta Percha and Telegraph Works Company Ltd.<sup>76</sup>

18. In 1884 the Gutta Percha company wished to extend its objects beyond those originally defined,<sup>77</sup> but "doubts [had] arisen as to the competency of the company to adopt such additional objects without the authority of parliament".<sup>78</sup> Those doubts were resolved by the *India Rubber, Gutta Percha and Telegraph Works Company (Limited) Act 1884*,<sup>79</sup> which provided that -

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<sup>74</sup> The 1859 Act, ss 48-52. All messages for the sovereign or on HM service were to have a right of priority at transmitting and receiving stations. These arrangements were supplemented by sections 53 to 60 which provided for: the continuation in force of all existing agreements with the Treasury; power to enter into new arrangements for usage and charging; arbitration of disputes; the ability of the company to enter into arrangements with foreign governments for message transmission (including within Turkey and Egypt); and the ability of the governor general of India, the governor of any presidency within India, and the governor of any British territory to take temporary control of the company's telegraph stations and the network in the event of public emergency (with compensation payable by the Treasury).

<sup>75</sup> The 1859 Act, ss 61-68. Deliberate or accidental damage to equipment could result in a compensation order as well as imposition of another penalty.

<sup>76</sup> See preamble to 47 & 48 Vict. c.ci (1884), discussed below.

<sup>77</sup> The various specific objects of the company (some five) were set out in clause 3 of the 1864 memorandum of association: see preamble to 47 & 48 Vict. c.ci (1884), discussed below, which recites the objects verbatim.

<sup>78</sup> Preamble to 47 & 48 Vict. c.ci (1884), below.

<sup>79</sup> 47 & 48 Vict. c.ci (1884) ("the 1884 Act"). The short title to the Act for citation purposes was given by section 1. In this note a comma has been inserted between "India Rubber" and "Gutta Percha" to improve clarity.



- (a) the original objects clause in the company's memorandum of association should be deleted and replaced by a new clause setting out some 11 objects,<sup>80</sup> and
- (b) nothing in the Act was to affect previous actions of the company or to interfere with the "exclusive privileges" relating to telegraphs vested in the Postmaster General.<sup>81</sup>

19. By 1903 further clarification of the company's objects was needed in relation to the holding of shares in other companies (which had become a customary means by which goods and work were paid for), and the acquisition of real property (land) "in several of the colonies of the United Kingdom and elsewhere abroad" where the company carried on business.<sup>82</sup> Parliamentary authority was again required in order to alter the company's memorandum of association.

20. The *India Rubber, Gutta Percha and Telegraph Works Company (Limited) Act 1903*<sup>83</sup> provided for the amendment of section 2 of the 1884 Act. Paragraphs (8) and (10) of the company's revised memorandum were cancelled and new paragraphs substituted. These paragraphs permitted the company to erect works and buildings and acquire lands "within or without the United Kingdom" (thus removing the restriction to France only),<sup>84</sup> and to acquire assets, trade and goodwill of other similar companies, including by acquiring shares, stock or securities of any such company or in any "body politic municipal commercial or of any other kind", by way of payment in whole or in part due to the company under any contract or other dealing.<sup>85</sup>

### *Status of the Acts*

21. The European and Indian Junction Telegraph Company became defunct once it had lost the opportunity of securing the Ottoman government cable concession,

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<sup>80</sup> The 1884 Act, s 2. The objects ranged from the construction and laying of submarine and overground telegraphs and telephones, together with equipment designed to produce and supply "electric, magnetic, galvanic, hydraulic" and other "similar force", through to the manufacture of torpedo boats (and torpedoes) and the acquisition and use of india rubber, gutta percha, balata and other gums. The new clause also spoke of the purchase of lands, works, houses and other property in "the United Kingdom or France". The company had additional factories at Burton-on-Trent in England and at Persan (Seine et Oise) in France.

<sup>81</sup> The 1884 Act, ss 3, 5. By section 4 a printed copy of the 1884 Act was to be delivered to the registrar of joint stock companies.

<sup>82</sup> See preamble to 3 Edw.7 c.xxvi (1903), discussed below.

<sup>83</sup> 3 Edw.7 c.xxvi (1903) ("the 1903 Act"). The short title to the Act was given by section 1. As with the 1884 Act, in this note a comma has been inserted between "India Rubber" and "Gutta Percha".

<sup>84</sup> The 1903 Act, s 2, substituted para (8).

<sup>85</sup> The 1903 Act, s 2, substituted para (10). The company was also permitted to dispose of such share or stock holdings, to guarantee interest or dividend payments on shares or stock of similar companies, and to promote new companies in furtherance of its trade or business interests. By section 3 a printed copy of the 1903 Act was to be delivered by the company to the registrar of joint stock companies.

only months after the passing into law of the 1857 Act. The 1857 Act had been designed to put the European company on a more secure footing, both operationally and financially. Given the demise of the European company and its enterprise, the 1857 Act now serves no useful purpose.

22. The Red Sea and India Telegraph Company (and its 1859 Act) became redundant when its assets were transferred, under the terms of the 1862 Act, to the Telegraph to India Company which, in turn, failed to effect a direct telegraphic link to India. The 1859 Act no longer has any practical utility.

23. The India Rubber, Gutta Percha and Telegraph Works Company ceased to be a separate trading entity in 1955, when it was renamed the Silvertown Rubber Company (under its parent BTR). By 1965 the original company was only a shell. On that basis the 1884 and 1903 Acts are no longer of practical value.

#### *Extent*

24. The 1857 Act related to the activities of a company which was based in England and which had ambition to link the Mediterranean by cable to India via the Middle East.

25. The 1857 Act did not, on its face, describe its extent. On that basis it extended across the United Kingdom (which then included Ireland).

26. The 1859 Act related to the activities of a company which was based in England and which proposed to link Egypt and India by cable through the Red Sea.

27. As with the 1857 Act the 1859 Act did not show on its face its extent. But its context indicates that it was designed to cover the United Kingdom (including the whole of Ireland) and India.<sup>86</sup>

28. The 1884 and 1903 Acts were silent as to their territorial extent, but they did permit the Gutta Percha company to operate within the United Kingdom (which then included Ireland), France and the British colonies.

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<sup>86</sup> Section 47 empowered the company to enter disclaimers and alterations in respect of company-owned patents, subject to obtaining leave of the relevant government law officer in England (which included Wales), Ireland or Scotland.

*Consultation*

29. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, the Department for Culture, Media and Sport, Companies House, the High Commissions for India, Pakistan and Bangladesh, the Ministry of Law and Justice (Government of India), Invensys plc (as successor to BTR plc), and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposals set out in this note.

32-195-50  
LAW/005/032/06  
November 2012

## ASSAM COMPANIES

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<i>Reference</i>	<i>Extent of repeal</i>
Assam Company's Act 1865 (28 & 29 Vict. c.cxxix)	The whole Act.
Assam Company's (Reduction of Capital) Act 1876 (39 & 40 Vict. c.xx)	The whole Act.
Assam Company's Act 1888 (51 & 52 Vict. c.vii)	The whole Act.
Upper Assam Tea Company's Act 1898 (61 & 62 Vict. c.xiv)	The whole Act.

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### **Assam Company**

#### *Background*

1. The East India Company lost its monopoly on the Chinese tea trade in 1833. The British government therefore turned its attention to tea planting in India, and in 1834 the governor general of India established a tea committee to investigate the most promising areas for tea cultivation. In the following years the government established several experimental tea plantations in Assam, and in 1838 the first shipment of Assam tea was sent to London, where it was enthusiastically received.<sup>87</sup>
2. A group of merchants from London and Calcutta formed the Assam Company in February 1839, and applied to the government for the transfer of its tea plantations.<sup>88</sup> In late 1839, the governor general made over two-thirds of the government's tea plantations and labourers to the merchants, and disbanded the tea committee.<sup>89</sup>

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<sup>87</sup> Taknet, *The Heritage of Indian Tea* (2002) excerpted at <http://www.teauction.com/home/heritage.asp> (accessed on 13 September 2012).

<sup>88</sup> Assam Company: Heritage, <http://www.assamco.com/heritage.html> (accessed on 13 September 2012).

<sup>89</sup> Kling, *Partner in Empire: Dwarkanath Tagore and the Age of Enterprise in Eastern India* (1976) p 150.

3. The Assam Company was established as a society by a deed of settlement in January 1840 to cultivate tea plant in Assam and elsewhere in India, and to manufacture tea for consumption and other products. A supplementary deed made in August 1840 provided for a share capital of £500,000, a registry of shareholders in India, and the convening of annual shareholders' meetings in Calcutta (now Kolkata). In 1845 the society was incorporated in India for 10 years by an Act of the governor general in council.<sup>90</sup> In February 1855 this was replaced by a new Indian Act incorporating the company for a further 20 years.<sup>91</sup> The company was run by two separate boards of directors, in London and Calcutta.

#### *Assam Company's Act 1865*

4. The company's capital was to comprise 10,000 shares at £50 each. By 1865 some 9,777 of the company's shares had been subscribed for (and partly paid up), although 419 shares had since been forfeited. That meant that the company had received moneys totalling £193,337 10s.<sup>92</sup> Of the 9,358 shares issued which were still operative, 6,954 were held by shareholders registered in England and 2,404 were held by shareholders in India.<sup>93</sup>

5. The society, through its company, had expended large sums out of both capital and revenue on its Assam estates. It required powers beyond those in the original deeds of settlement and the Indian incorporating Act of 1855: without them it would continue to suffer "serious inconveniences".<sup>94</sup> The solution was to be reincorporated by parliamentary Act, which could bestow additional operational powers, and which would supersede parts of the society's deeds and repeal the Indian Act.

6. The *Assam Company's Act 1865*<sup>95</sup> provided as follows -

- (a) that the Companies Clauses Consolidation Act 1845,<sup>96</sup> insofar as it was consistent with the society's deeds, be incorporated within the present Act, and that it should apply equally in India and in England<sup>97</sup>

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<sup>90</sup> Antrobus, *The History of the Assam Company 1839-1953* (1957), p 62.

<sup>91</sup> Preamble to Act 28 & 29 Vict. c.cxxix (1865), discussed below. The 1855 Indian Act was Act No 4 of 1855.

<sup>92</sup> The last call on shares had been made in 1843 (to £20 a share), and no further calls were made until 1875: see preamble to 39 & 40 Vict. c.xx (1876), discussed below.

<sup>93</sup> See preamble to 28 & 29 Vict. c.cxxix (1865), discussed below.

<sup>94</sup> 28 & 29 Vict. c.cxxix (1865), preamble.

<sup>95</sup> 28 & 29 Vict. c.cxxix (1865) ("the 1865 Act"). Section 1 gave the Act its short title "for all purposes". By section 2 the 1865 Act was to come into force two months after the governor general of India's legislative council had passed an Act repealing the 1855 Indian Act. And by section 40 no provisions in the 1865 Act were to take effect where they were repugnant to the laws in force in India.

<sup>96</sup> 8 & 9 Vict. c.16 (1845).

- (b) that the various existing registered shareholders of the society (whether individual or corporate) be “united into a company”, incorporated under the name “The Assam Company”,<sup>98</sup> with a nominal capital of £500,000<sup>99</sup>
- (c) that the new company’s undertaking should - amongst other things - embrace the ability to cultivate the tea plant in Assam and in “other parts in the British possessions, and the adjacent territories in India”, to prepare tea for sale, and to import tea “into English and other ports for sale”. In connection with these functions the company could sell and lease its lands and enter into contracts with the government of India (and others). Where it appeared “probably advantageous” to the company, it could acquire lands and use its facilities for the working and preparation of “other products”, including coal and other minerals, in Assam or any of the British Indian possessions and territories<sup>100</sup>
- (d) for the holding and conduct of ordinary and extraordinary meetings of shareholders<sup>101</sup>
- (e) for the number, qualification and retirement of directors<sup>102</sup>
- (f) that the original society’s deeds of association be annulled, subject to re-enactment of certain provisions which needed to remain in force, and the 1855 Indian Act be repealed, subject to various savings<sup>103</sup>
- (g) that share registration arrangements be put in place for both England and India,<sup>104</sup> and

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<sup>97</sup> The 1865 Act, ss 3, 4. On formation the Assam Company had “an English domicile”: the 1865 Act, preamble. Sections 5 and 6 provided various statutory definitions. By section 15 any advertisements relating to the affairs of the company were to be placed in a London daily morning paper (for England) and in “commonly circulating” newspapers in Bengal, Assam and other districts where the company had establishments or estates (for India). Similarly, by section 38 all company notices were to be published in the *London Gazette* (for England) and in such newspaper as the governor general would ordinarily publish official notices (for India).

<sup>98</sup> The 1865 Act, s 7. The company was granted a common seal and was empowered, for the purposes of the Act, to acquire, hold and dispose of land and other property.

<sup>99</sup> The 1865 Act, s 16. The company’s £500,000 capital was to be held in 10,000 £50 shares.

<sup>100</sup> The 1865 Act, s 8. By section 28 all plantations and estates originally held by the former society (together with all stock in trade, moneys and other movables) were to vest automatically in the company without the need for formal transfer.

<sup>101</sup> The 1865 Act, ss 9-12. The quorum was to be ten shareholders holding a minimum of 100 shares between them. The number of votes available to shareholders in general meetings ranged from one to four, dependent upon the size of his or her registered holding (up to 20 shares gave an entitlement to one vote; a holding of more than 100 shares gave an entitlement to four votes).

<sup>102</sup> The 1865 Act, ss 13, 14. The number of directors was to be between five and seven, each holding 25 shares.

<sup>103</sup> The 1865 Act, ss 18-27. In essence, annulment and repeal were not to have retroactive effect (especially as to previous actions under the deeds and 1855 Indian Act), and the company was to stand in the shoes of the former society so far as rights and liabilities were concerned (and in connection with all conveyances and other land dealings, all legal proceedings, all debts owed to and by the society, all meeting resolutions, and the holding of all salaried offices and employments).

<sup>104</sup> The 1865 Act, ss 29-37. The company was empowered to establish an office in India for share registration purposes (operating under the same rubric as applied in England), staffed by a registrar, which office would hold the registers of shareholders and of share transfers. Shares were only to be

- (h) that the company could enact byelaws for India (breach of which would give rise to penalties), subject to the byelaws not being repugnant to the laws then in force for the part of India concerned.<sup>105</sup>

*Assam Company's (Reduction of Capital) Act 1876*

7. In March 1866, pursuant to enactment of the 1865 Act, the governor general of India in council passed legislation repealing the original 1855 Indian Act.<sup>106</sup>

8. By 1875, some nine years later, 9,358 £50 shares had been taken up (out of the 10,000 available) and each share had been paid up to the amount of £20. The company's total capital remained at £193,337 10s. In 1875, at general meetings held in June and November, the company resolved to reduce its nominal capital to £300,000 by devaluing its shares from £50 to £30 (leaving an outstanding liability of only £10 on each share).<sup>107</sup> However, effecting this change required further parliamentary authority.

9. The *Assam Company's (Reduction of Capital) Act 1876*<sup>108</sup> provided that section 16 of the 1865 Act (which fixed the company's nominal capital stock at £500,000)<sup>109</sup> be repealed and that the capital be reduced to £300,000, made up of 10,000 £30 shares.<sup>110</sup> The Act also provided that the reduction in capital was not to release any shareholder from any liability for the company's previously incurred debts or obligations.<sup>111</sup>

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held on one register at a time, although the India register entries would be copied from time to time to England. Shares could on notice be transferred from one register to another, and the locality of the register would determine the jurisdiction for resolving any question relating to the shareholding. By section 37 an official seal could be prepared for use in India in place of the company's common seal.

<sup>105</sup> The 1865 Act, ss 39, 41-43. A magistrate was empowered to award to an informer (with any balance to the company) such penalty or forfeiture as was imposed on a miscreant. Appeal from any adjudication lay to the next most senior court.

<sup>106</sup> Act No 11 of 1866, referred to below as "the 1866 Indian Act".

<sup>107</sup> See preamble to 39 & 40 Vict. c.xx (1876), discussed below. The company felt secure in taking this course of action because it owed no debts in Assam or elsewhere apart from small expenses incurred incidental to its current year's crop production. Shareholder dividends paid out over the previous 20 years had amounted to £511,640 (representing a 13.5% p.a. yield on the company's capital).

<sup>108</sup> 39 & 40 Vict. c.xx (1876) ("the 1876 Act"). The substance of the Act was very short, embracing only six sections. Section 1 gave the 1876 Act its short title, and provided that the previous 1865 Act and the 1876 Act could be cited together as "The Assam Company's Acts, 1865 and 1876" (and by section 3 the two Acts were to construed as one Act). Section 2 provided for interpretation of terms, so that reference to the company would mean the Assam Company as incorporated by the 1865 Act. Section 6 provided that the costs of obtaining the Act were to be borne by the company.

<sup>109</sup> See above for discussion of the 1865 Act.

<sup>110</sup> The 1876 Act, s 4. The 9,358 shares already issued were deemed to have £20 per share paid up.

<sup>111</sup> The 1876 Act, s 5.

### *Assam Company's Act 1888*

10. Between 1876 and 1888 the company incurred no significant debts in Assam or elsewhere (bar relatively minor debts as an incident of its ordinary crop production activity), but it did expend “very large sums of money” on its Assam estates.<sup>112</sup> No calls on its, or on its predecessor society's, shares had been made since 1843. Dividends over the past 25 years had totalled £818,825 (at a rate of 17.5% p.a.).

11. By 1888 the company envisaged acquiring further lands in Assam with a view to “consolidating their estates in India”.<sup>113</sup> To this end it needed to be able to borrow £30,000 on mortgage. It also wanted to reduce its nominal capital a second time, down to £200,000 (divided into 10,000 £20 shares), which would make its 9,358 issued shares fully paid up. However, the company had no borrowing powers, and further adjustment of its share value required parliamentary authority.

12. The *Assam Company's Act 1888*<sup>114</sup> was nearly as short as the 1876 Act. It provided that -

- (a) section 4 of the 1876 Act<sup>115</sup> be repealed, that the company's capital be £200,000 in 10,000 £20 shares, and that the 9,358 issued shares be deemed paid-up at the new nominal value<sup>116</sup>
- (b) the provisions of the Companies Clauses Consolidation Act 1845 relating to distribution of capital into shares, and borrowing moneys on mortgage or bond, be deemed to be incorporated within the 1888 Act,<sup>117</sup> and
- (c) the company could borrow and re-borrow on mortgage up to a £30,000 limit, subject to such borrowed sums being repaid within 10 years<sup>118</sup> and the moneys raised being used only for the purposes of the undertaking as if they were capital.<sup>119</sup>

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<sup>112</sup> See preamble to 51 & 52 Vict. c.vii (1888), discussed below. Additionally the company had accrued a reserve fund of £40,574 16s 1d.

<sup>113</sup> Preamble to 51 & 52 Vict. c.vii (1888).

<sup>114</sup> 51 & 52 Vict. c.vii (1888) (“the 1888 Act”). Section 1 provided for the short title of the Act and for citation of the three Acts of 1865, 1876 and 1888. Section 2 provided for interpretation of various terms and, in particular, that reference to “the company” meant the Assam Company incorporated under the 1865 Act.

<sup>115</sup> See above. Section 4 of the 1876 Act dealt with the previous reduction of capital to £300,000.

<sup>116</sup> The 1888 Act, s 3. By section 4 the reduction of the company's capital was not to release any shareholder from his or her liability for any debt or obligation previously incurred by the company.

<sup>117</sup> The 1888 Act, s 5.

<sup>118</sup> The 1888 Act, s 6. By section 7 any mortgagee could enforce payment of any arrears of interest or principal due by appointment of a receiver although, in the case of principal due, the amount owed had to be £1,000 or more.

<sup>119</sup> The 1888 Act, s 8.



## Upper Assam Tea Company

### *Background*

13. During the 1850s there was a boom in Assam tea consumption. The Assam Company lost its monopoly as dozens of rival tea companies established plantations in the area. One such new enterprise was the Upper Assam Tea Company.<sup>120</sup>

14. The Upper Assam Tea Company was incorporated in 1862 with a nominal capital of £250,000, comprising 25,000 ordinary shares at £10 each. In 1872 the tea company's capital was increased to £260,000 by the creation of 2,000 £5 preference shares.<sup>121</sup>

15. On 11 June 1870 a petition had been presented to the Lord Chancellor for the winding-up of the company.<sup>122</sup> It was due to be heard on 24 June of that year, but the company evidently survived, although records of the hearing are no longer available.<sup>123</sup>

16. In April 1890 the company issued a notice that it had applied to introduce a bill to empower it to sell certain of its estates and use the proceeds to purchase other land.<sup>124</sup> However, Hansard contains no record of the bill being discussed in parliament.

17. By 1898 some 18,925 ordinary shares of the company, and all 2,000 preference shares, had been issued and were fully paid up. Additionally £140,200 worth of debentures had been issued (which remained outstanding). The company had by this stage accumulated a fixed dividend of £15 15s on each preference share. In order to effect a distribution the company required parliamentary sanction for a scheme.<sup>125</sup>

18. The *Upper Assam Tea Company's Act 1898*<sup>126</sup> provided that -

- (a) the chancery division of the High Court, on application being made by the company, could order meetings of shareholders and of debenture

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<sup>120</sup> Taknet, *The Heritage of Indian Tea* (2002), excerpted at <http://www.teauktion.com/home/heritage.asp> (accessed on 13 September 2012).

<sup>121</sup> See preamble to 61 & 62 Vict. c.xiv (1898), discussed below. The £5 preference shares conferred the right to a 15% p.a. fixed cumulative preferential dividend on the proportions paid up.

<sup>122</sup> *London Gazette*, 14 June 1870, p 2978.

<sup>123</sup> The National Archives Catalogue: The Lord Chancellor's Petition Books, <http://www.nationalarchives.gov.uk/catalogue/displaycataloguedetails.asp?CATID=2027&CATLN=3&accessmethod=5&j=1> (accessed on 13 September 2012). According to the National Archives the Petition Books for this period have been destroyed.

<sup>124</sup> *London Gazette*, 11 April 1890, pp 2140-1.

<sup>125</sup> Preamble to 61 & 62 Vict. c.xiv (1898). The scheme was set out in the Schedule to the Act.

<sup>126</sup> 61 & 62 Vict. c.xiv (1898) ("The 1898 Act"). The short title to the Act was given by section 1.

holders to agree by majority vote a reordering scheme, give directions as to notices and other procedural matters, and sanction the final version of the scheme<sup>127</sup>

- (b) the scheme was to operate “as if the company were then being wound up voluntarily under the Companies Acts 1862 to 1893”, and would reduce the company’s capital to £79,675<sup>128</sup>
- (c) trustees and others holding debentures or shares in a fiduciary capacity were authorised to agree the scheme and to be indemnified accordingly<sup>129</sup>
- (d) the company’s memorandum and articles of association were deemed to have been altered so as to accord with the scheme’s provisions,<sup>130</sup> and
- (e) printed copies of the 1898 Act were to be supplied by the company to the registrar of joint stock companies and to company members who subsequently received copies of the memorandum and articles.<sup>131</sup>

#### *Status of the Acts*

19. The Assam Company made record profits in the early 1920s, and there was pressure from the shareholders to restructure and increase the company’s capital. The board resisted at first, but eventually gave way.<sup>132</sup> On 6 December 1923, an extraordinary general meeting of the company passed a resolution to wind up voluntarily and subsequently reconstruct the company. This resolution was confirmed by a second meeting on 21 December.<sup>133</sup>

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<sup>127</sup> The 1898 Act, ss 2, 3 and Sch. The court was also empowered to consider the merits of the scheme, to make such modifications as were required, and to order further meetings. By section 4 no proceedings were “in any way [to] hinder or prevent the company from continuing its business”.

<sup>128</sup> The 1898 Act, s 2 and Sch. The scheme provided for the reduction in value of the 18,925 issued shares from £10 to £1 per share (and the division of each of the remaining 6,075 ordinary shares into £1 shares); and the cancellation of the 2,000 preference shares and issue of 13 £1 ordinary shares for each share cancelled. Consequently of the 79,675 ordinary £1 shares (18,925 + 60,750) some 44,925 (18,925 + 26,000) would be issued and fully paid up.

<sup>129</sup> The 1898 Act, s 5.

<sup>130</sup> The 1898 Act, s 6.

<sup>131</sup> The 1898 Act, ss 7, 8. By section 9 the costs of procuring the Act and subsequent sanctions were to be borne by the company.

<sup>132</sup> Antrobus, *The History of the Assam Company 1839-1953* (1957), p 203.

<sup>133</sup> *London Gazette*, 1 January 1924, p 102 - though note that Antrobus gives a different date (16 November), p 203.

20. The new Assam Company Limited took over from 1 January 1924, and was registered under the Companies Acts. It held its first AGM on 30 June 1924.<sup>134</sup> On 8 April 1929, it held a special general meeting to give an account of the old company's winding-up.<sup>135</sup> It continued to trade throughout the Second World War and after India achieved independence in 1947.

21. In 1977 the Assam Company's Indian undertakings were amalgamated with those of five other tea companies to form the Assam Company (India) Limited.<sup>136</sup> Shares in the new company were issued to the public in 1979. On 4 December 1989, it was renamed the Assam Company Limited. Now part of the Duncan Macneill Group, it currently owns 15 tea estates, and has also diversified into oil and natural gas production.

22. On 23 May 1980 a notice was published in the *London Gazette* that the old Assam Company's name had been struck off the Register.<sup>137</sup> The company was therefore dissolved on that date, in accordance with section 353(5) of the Companies Act 1948. As a consequence, the three Acts relating to the original Assam Company - 1865, 1876 and 1888 - have now become spent and can be repealed.

23. In exactly the same way the Upper Assam Tea Company ceased to exist as an entity. In 1977 it too was amalgamated with five other tea companies to form the Assam Company (India) Limited,<sup>138</sup> and in December 1989 it was renamed the Assam Company Limited (today part of the Duncan Macneill Group).

24. On 10 July 1980 a notice was published in the *London Gazette* that the Upper Assam Tea Company's name had been struck off the Register.<sup>139</sup> The company was therefore dissolved on that date, in accordance with section 353(5) of the Companies Act 1948. Accordingly the 1898 Act relating to the original Upper Assam Tea Company no longer has practical utility and can be repealed.

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<sup>134</sup> Antrobus, *The History of the Assam Company 1839-1953* (1957), pp 203-4.

<sup>135</sup> *London Gazette*, 5 March 1929, p 1623.

<sup>136</sup> The Economic Times: Assam Company (India) Ltd. Company Information, [http://economictimes.indiatimes.com/assam-company-\(india\)-ltd/infocompanyhistory/companyid-14042.cms](http://economictimes.indiatimes.com/assam-company-(india)-ltd/infocompanyhistory/companyid-14042.cms) (accessed on 13 September 2012).

<sup>137</sup> *London Gazette*, 23 May 1980, p 7516.

<sup>138</sup> The Economic Times: Assam Company (India) Ltd. Company Information, above.

<sup>139</sup> *London Gazette*, 10 July 1980, p 9833.

### *Extent*

25. Although silent on their face as to extent, the three Acts relating to the original Assam Company were designed to regulate activities of that company within England (where it had its domicile) and India<sup>140</sup> and, more particularly, within Assam in eastern India, Bengal, and other British Indian possessions and territories (including Calcutta, today Kolkata).

26. The 1898 Act relating to the Upper Assam Tea Company applied to the company's operations in England and Wales and in India, although the Act did not specify its extent.

### *Consultation*

27. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, Companies House, the Indian High Commission, the Duncan Macneill Group of companies, and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposals set out in this note.

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<sup>140</sup> See the 1865 Act, preamble and section 15.

## EAST INDIA COAL COMPANY

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<i>Reference</i>	<i>Extent of repeal</i>
East India Coal Company Limited Act 1860 (23 & 24 Vict. c.liii)	The whole Act.

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### *East India Coal Company*

1. The East India Coal Company was set up as a limited liability company under a deed of settlement in November 1855 and, in October 1856, was registered as a joint stock company. The company's colliery operations were to be focussed on the province of Bengal, and administered from Calcutta (today Kolkata).

2. In March 1859 the company, by special resolutions (confirmed in April 1859), adopted regulations<sup>141</sup> for the governance of the company (designed to supersede those in the deed of settlement), authorised the appointment of a chairman and deputy chairman, and laid down arrangements for the holding of, and voting in, general meetings and for certain matters relating to shareholders.<sup>142</sup> The directors acted on the resolutions, but doubts subsequently arose as to the resolutions' validity. Additionally, the company now needed power to establish a registration office (for shares, stock and bonds) in India. Parliamentary authority was required to address these issues.

3. The *East India Coal Company Limited Act 1860*<sup>143</sup> provided that -

- (a) all resolutions and proceedings of the company continue in force, and the resolutions of March 1859 be ratified<sup>144</sup>
- (b) the company could negotiate and conclude contracts with the secretary of state in council of India for making and working collieries, mines and associated works, acquire lands in India (including leasing lands from the

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<sup>141</sup> The regulations were those set out in Table B in the Schedule to the Joint Stock Companies Act 1856, subject to certain modifications.

<sup>142</sup> See preamble to 23 & 24 Vict. c.liii (1860), discussed below. The various resolutions of March 1859, together with selected clauses from the 1855 deed of settlement, were set out in the Schedule to the Act. The company's offices were to be at 132-133 Gresham House, Old Broad Street in the City of London.

<sup>143</sup> 23 & 24 Vict. c.liii (1860) ("the 1860 Act"). The short title to the Act was given by section 1.

<sup>144</sup> The 1860 Act, s 4. Sections 2 and 3 contained various definitions.

- secretary of state) and, in the future, surrender or sell any part of the undertaking to the secretary of state<sup>145</sup>
- (c) the company could seal documents in India in accordance with the company's regulations<sup>146</sup>
  - (d) a rubric be in place for the issue and transfer of shares<sup>147</sup>
  - (e) the directors could establish offices in India for the issue, registration and transfer of shares and securities, and appoint personnel to undertake the necessary administrative work<sup>148</sup>
  - (f) the company could borrow on mortgage, but only when the initial borrowing of £25,000 (under the 1855 deed of settlement, as modified by the 1859 resolutions) had been paid off,<sup>149</sup> and
  - (g) various ancillary issues be catered for.<sup>150</sup>

#### *Status of the Act*

4. Between 1856 and 1859 the East India Coal Company had purchased from one Ramchunder Moitry (described in the 1859 resolutions as “the Baboo”) collieries and lands in the Bhurdwan district in Bengal province in return for an allocation of company shares. The Baboo had also stood surety for the company in respect of its performance of a contract with the government of India.<sup>151</sup>

5. In July 1866 extraordinary general meetings of the company resolved voluntarily to wind up the company, and to appoint a liquidator based in London.<sup>152</sup> In February 1867 the appointed liquidator gave notice to the company's creditors,

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<sup>145</sup> The 1860 Act, s 5. By section 6 the company and the secretary of state were empowered to enter into ancillary contracts.

<sup>146</sup> The 1860 Act, s 7.

<sup>147</sup> The 1860 Act, ss 8-10, 17. Shares could be issued under seal in England or India, where calls for payment could also be made on issued shares. The location of the register where particular shares were registered would determine legal jurisdiction for the resolution of any question arising.

<sup>148</sup> The 1860 Act, ss 12, 13. All the powers in the Act and the company's articles in relation to share issue and registration which applied in Great Britain were to apply equally in India. By section 14 at each Indian office registers were to be maintained for shareholders, consolidated stockholders (if any), transfers and securities, and from time to time copies transmitted to London. Sections 15 and 16 provided that shares and other securities could only be registered at one office at a time, but a share or security holder could opt for transfer from one registration office (whether in London or in India) to another.

<sup>149</sup> The 1860 Act, s 11 and Sch. The total borrowing limit was to remain at £25,000.

<sup>150</sup> The 1860 Act, ss18-22. For example, that penalties under byelaws be recoverable before a single justice in India; that certified copies of registers held in England or in India be self-producing in court proceedings; and that newspaper advertisements or official notices for India should be published in Calcutta or Bengal as appropriate.

<sup>151</sup> See the 1860 Act, Sch Sixth Resolution.

<sup>152</sup> Notice in *The London Gazette*, 27 July 1866 at pp 4255-6.

inviting them to lodge particulars of their debts or claims prior to his making a distribution.<sup>153</sup>

6. In May 1881 notice was given in *The London Gazette* that the company had been struck off the register and dissolved on that day.<sup>154</sup> The 1860 Act is no longer necessary.

#### *Extent*

7. The 1860 Act extended to Great Britain and to India (as then defined).<sup>155</sup>

#### *Consultation*

8. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, Companies House, the High Commissions of India and Bangladesh, and the relevant authorities in Scotland and Wales have been consulted about this repeal proposal.

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<sup>153</sup> Notice in *The London Gazette*, 5 February 1867 at p 656.

<sup>154</sup> Notice in *The London Gazette*, 3 May 1881 at pp 2124-5.

<sup>155</sup> "India" in the 1860 Act was defined as including the territories vested in Her Majesty Queen Victoria by the Act 21 & 22 Vict c.106 (1858) together with all such territories as may become vested pursuant to that Act: the 1860 Act, s 2. In due course these territories embraced what today are the states of India, Pakistan, Bangladesh and Burma.

## INDIA OFFICE

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<i>Reference</i>	<i>Extent of repeal</i>
27 & 28 Vict. c.51 (1864) (India Office Act)	The whole Act.
India Office Site and Approaches Act 1865 (28 & 29 Vict. c.32)	The whole Act.
India Office (Sale of Superfluous Land) Act 1881 (44 & 45 Vict. c.7)	The whole Act.

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### *Background*

1. From 1786 onwards the East India Company (originally a trading entity) ruled British India on behalf of the Crown.<sup>156</sup> But by 1813 the company had lost much of its trading monopoly<sup>157</sup> and in 1858, following the Sepoy Rebellion of 1857, the Crown assumed direct governance of India, leaving the company with a much reduced purpose until its dissolution in 1874.
2. The India Office was formed in 1858 (under the new secretary of state for India). The East India Company's offices in Leadenhall Street in the City of London (East India House, last extended in 1799) were deemed too small and too remote from Whitehall to accommodate the new India Office on a permanent basis. As a consequence a building for the India Office was included in the already extant plans for a new Foreign Office building.<sup>158</sup>
3. The Foreign and India Offices were built in the period 1861 to 1868. The India Office moved in September 1861 from East India House (which was then demolished) to the Westminster Hotel. Building work on the India Office started in September 1863 (followed by work on the Foreign Office), and work on both Offices

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<sup>156</sup> See the East India Company Act 1786 (26 Geo.3 c.16), repealed in 1793. The East India Company had been formed in 1600.

<sup>157</sup> See the East India Trade Act 1813 (54 Geo.3 c.34), repealed in 1823.

<sup>158</sup> See *The Foreign and Commonwealth Office: History*, which is available at <http://www.fco.gov.uk/resources/en/pdf/4103709/fco-history.pdf> (accessed 11 September 2012). The principal architect responsible for the India Office's interiors and part of its exterior was M. Digby Wyatt, appointed in 1859.



was completed by June 1868.<sup>159</sup> The India Office then relocated to its new premises.<sup>160</sup>

4. The India Office building adjoined that of the Foreign Office, situate on the south-western corner of the site, facing across St James's Park and fronting on to King Charles Street, off Whitehall.<sup>161</sup> With Indian independence in 1947 the India Office ceased to have a role.<sup>162</sup> The building was taken over by the Foreign Office, providing accommodation for the German Department in the former India Office council chamber.<sup>163</sup> Today the whole complex is occupied by the Foreign Office and the building has listed status. Renovation of the old India Office building was completed in 1987.

5. The formalities for acquisition of the site for the India Office building in 1864 and 1865, and the later sale of superfluous land in 1881, gave rise to three pieces of legislation.

#### *27 & 28 Vict. c.51 (1864) (India Office Act)*

6. By a series of five Acts, spanning the years 1855 to 1862, parliament authorised the acquisition of parcels of land for the extension of public offices in Downing Street. By 1864 the land had been purchased by, and was vested in, the commissioners of Her Majesty's Works and Public Buildings.<sup>164</sup> The secretary of state in council of India had already contributed a proportion of the acquisition moneys (some £33,220 17s 7d) with a view to building new accommodation for the India Office on part of the combined site.<sup>165</sup>

7. In 1864 the secretary of state in council of India wished to complete the purchase of a specific site within the landholding so that his department's offices

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<sup>159</sup> See Anthony Seldon, *The Foreign Office* (Harper Collins, 2000), pp 48-54, 79-86 (the book contains some fine illustrations of the exterior and interior of the Foreign Office and the India Office, including Durbar Court in the latter).

<sup>160</sup> The separate Colonial Office was subsequently added to the complex, along with the Home Office (built 1870-75), thus completing the central quadrangle.

<sup>161</sup> In 1925 a further storey was built to provide additional accommodation.

<sup>162</sup> See Indian Independence Act 1947 (10 & 11 Geo.6 c.30). It is implicit in section 14(1) of that Act that the secretary of state for India (together with his department) ceased to exist, and that his ancillary functions were transferred to another secretary of state or a minister.

<sup>163</sup> *FCO: India Office Council Chamber*, <http://www.fco.gov.uk/en/about-us/our-history/our-buildings/buildings-in-uk/king-charles-street/india-office> (accessed 11 September 2012).

<sup>164</sup> See preamble to 27 & 28 Vict. c.51 (1864). The five public offices extension Acts were: 18 & 19 Vict. c.95 (1855), 22 Vict. c.19 (1859), 24 & 25 Vict. cc.33 & 88 (1861), and 25 & 26 Vict. c.74 (1862).

<sup>165</sup> In or just before 1862 the former State Paper Office was demolished to make way for a portion of the new India Office.

could be built. The purchase value was put at £86,765 17s 4d, leaving the balance of £53,544 19s 9d to be paid to the commissioners.<sup>166</sup> In order that the balance could be paid, and the relevant land transferred for the service of the government of India, parliamentary authority was required.

8. The *India Office Act 1864*<sup>167</sup> provided as follows -
- (a) that, on payment by the secretary of state in council of India of £53,544 19s 9d into the United Kingdom's consolidated fund,<sup>168</sup> all the land described in the Act and held by the commissioners of HM Works and Public Buildings should vest in Her Majesty "for the service of the government of India"<sup>169</sup>
  - (b) that, when vested, the land should continue to be liable for the payment of parochial rates and taxes, duly apportioned, as previously paid by the Works commissioners,<sup>170</sup> and
  - (c) that nothing was to be built on the Great Quadrangle without the consent of both the secretary of state in council of India and the first commissioner of HM Works and Public Buildings.<sup>171</sup>

#### *India Office Site and Approaches Act 1865*

9. After the 1864 Act had been passed the secretary of state found that further land was required for the India Office development. Acquisition of "certain houses, buildings, and lands in the parish of St. Margaret, Westminster" required additional parliamentary authority.<sup>172</sup> The *India Office Site and Approaches Act 1865*<sup>173</sup> provided -

- (a) that the secretary of state in council of India be empowered to purchase the "prescribed lands", to appropriate them as a site for his offices and to

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<sup>166</sup> Preamble to 27 & 28 Vict. c.51 (1864), discussed below.

<sup>167</sup> 27 & 28 Vict. c.51 (1864) ("the 1864 Act"). The Act did not carry a short title. The Act does not appear on the statute law database. The Queen's Printers' copy carries the heading "India Office". In the *Chronological Table of the Statutes 1235-2010* Pt 1 the 1864 Act is referred to as the "Westminster Offices Act" (unrepealed).

<sup>168</sup> The United Kingdom at this time meant Great Britain and the whole of Ireland.

<sup>169</sup> The 1864 Act, s 1 and Sch. The Schedule described the landholding and referred to a plan deposited with the Court of Exchequer. The vesting of the land was specifically for the purpose of the government of India in accordance with the Government of India Act 1858 (21 & 22 Vict. c.106).

<sup>170</sup> The 1864 Act, s 2. The land represented 11/35<sup>ths</sup> (just under a third) of the whole hereditament held by the commissioners.

<sup>171</sup> The 1864 Act, s 3.

<sup>172</sup> Preamble to 28 & 29 Vict. c.32 (1865), discussed below. A plan and a book of reference relating to the various parcels of land and owners had already been lodged with the clerk of the peace for Middlesex at the Clerkenwell sessions house.

<sup>173</sup> 28 & 29 Vict. c.32 (1865) ("the 1865 Act"). The short title to the Act was assigned by section 1.

- create “convenient accesses and approaches thereto”, and to hold them in trust for Her Majesty for the service of the government of India<sup>174</sup>
- (b) that the lands be “occupied exclusively as offices” and continue to be assessed for land tax or poor or other rates<sup>175</sup>
- (c) that the compulsory purchase provisions of the Lands Clauses Consolidation Act 1845<sup>176</sup> (with certain exceptions) be incorporated with the 1865 Act, and that the secretary of state, his surveyors, officers and workmen be authorised to enter the lands in daytime for the purpose of surveying or valuation<sup>177</sup>
- (d) that on purchase of the lands all rights of way, sewerage and drainage rights, and all other easements across the lands were to be extinguished, subject to affected persons being entitled to compensation computed under the 1845 Act<sup>178</sup>
- (e) that the secretary of state be empowered to demolish any buildings on the lands and construct new buildings and works and undertake anything “necessary or expedient” to fulfil the Act’s purposes,<sup>179</sup> and
- (f) that provision be made for various ancillary matters.<sup>180</sup>

*India Office (Sale of Superfluous Land) Act 1881*

10. By 1881, some 13 years after the new India Office had opened, a portion of the land acquired under the 1865 Act (to the south of Charles Street)<sup>181</sup> was found to be surplus to requirements. Accordingly the secretary of state in council of India agreed to sell the land on to the commissioners of HM Works and Public Buildings for £68,600,<sup>182</sup> but formal transfer required specific parliamentary authorisation.

<sup>174</sup> The 1865 Act, ss 2, 3. By section 16 a copy of the plan of the “prescribed lands” was to be made available for public inspection at the then India Office.

<sup>175</sup> The 1865 Act, s 4. The lands so held were not to be assessed, whilst in use as offices, for any tax or rate at a value higher than when they were purchased.

<sup>176</sup> 8 & 9 Vict. c.18 (1845) (“the 1845 Act”).

<sup>177</sup> The 1865 Act, ss 5, 6. By section 9 the compulsory purchase powers in the Act were only to run for five years.

<sup>178</sup> The 1865 Act, s 7. By section 8 all compensation claims made by tenants at will (being tenants for a year or less) were to be determined in accordance with section 121 of the 1845 Act. And by section 11 nothing in the Act was to impair or remove the rights of the Metropolitan Board of Works in connection with sewers, drains or watercourses.

<sup>179</sup> The 1865 Act, s 10. Section 12 provided that all buildings erected on the acquired lands were to fall outside Part 1 of the Metropolitan Buildings Act 1855 (18 & 19 Vict. c.122) (repealed 1894).

<sup>180</sup> The 1865 Act, ss 13-15. For example, for the authentication of notices and other formal documents; for the giving of orders by the Court of Chancery in respect of moneys paid into the Bank of England or of securities, dividends or interest; and for penalties for obstruction.

<sup>181</sup> Now King Charles Street, London SW1.

<sup>182</sup> Preamble to 44 & 45 Vict. c.7 (1881), discussed below.

11. The *India Office (Sale of Superfluous Land) Act 1881*<sup>183</sup> provided -
- (a) that, on payment of the £68,600 by the Works commissioners to the account of the secretary of state in council,<sup>184</sup> the piece of land in question was to vest in the commissioners, and “their successors and assigns”, to be held for the public service<sup>185</sup>
  - (b) that the piece of land when transferred would continue to be subject to land tax, but at no higher value than that prevailing at the time of purchase under the 1865 Act,<sup>186</sup> and
  - (c) that any building erected on the land by the Works commissioners was to be exempt from operation of the Metropolitan Buildings Act 1855,<sup>187</sup> and all moneys received by the secretary of state were to be applied for the service of the government of India.<sup>188</sup>

#### *Status of the Acts*

12. The purpose underpinning the three Acts was to acquire land to build a new India Office for the secretary of state in council, and to dispose of a parcel of land which had ceased to be needed for the project.

13. The 1865 Act contained compulsory purchase and compensation powers, which powers were time-limited and expired in or around 1870.

14. The India Office building was completed and occupied in 1868. It ceased to have a function when the India Office was abolished in 1947. At that juncture the role of secretary of state in council of India ceased, and the premises occupied by the India Office passed to the adjoining Foreign Office.

15. The role of the commissioners of HM Works and Public Buildings passed finally to the Ministry of Public Buildings and Works in 1962, and the functions of that ministry were amalgamated into the Department of the Environment in 1970. Today

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<sup>183</sup> 44 & 45 Vict. c.7 (1881) (“the 1881 Act”). Section 1 gave the Act its short title.

<sup>184</sup> The receipt for the moneys was to be recorded at the Queen’s Remembrancer’s Office in the High Court: the 1881 Act, s 2.

<sup>185</sup> The 1881 Act, s 2 and Sch. The land was shown delineated on a deposited plan and was described in the Act’s Schedule. The Works commissioners were required to hold the land as if it had been purchased under the Act of 15 & 16 Vict. c.28 (1852) which related to the commissioners of Works, amended an 1851 Act, and (seemingly unrelated) vested the Edinburgh supreme court of justice buildings in the commissioners.

<sup>186</sup> The 1881 Act, s 3.

<sup>187</sup> 18 & 19 Vict. c.122 (1855), repealed by the London Building Act 1894 (57 & 58 Vict. c.ccxiii).

<sup>188</sup> The 1881 Act, ss 4, 5.

responsibility for government estates functions lies, in the main, with the relevant department of state.

16. On this basis the Acts of 1864, 1865 and 1881 relating to the late India Office have no practical purpose and may be repealed.

*Consultation*

17. HM Treasury, the Foreign and Commonwealth Office, the Bank of England, and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposals set out in this note.

32-195-50  
LAW/005/032/06  
November 2012

## INDIA STEAM SHIP COMPANY

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<i>Reference</i>	<i>Extent of repeal</i>
1 & 2 Vict. c.xcvii (1838) (India Steam Ship Company Act)	The whole Act.

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### *Background*

1. The history of the India Steam Ship Company is obscure. Several companies were formed in the mid-19<sup>th</sup> century to undertake sea transportation of passengers and cargo between the United Kingdom and parts of British India (and beyond, for example, to Australia).<sup>189</sup>

2. Archive material suggests that in December 1838 the Indian Steam Ship Company (which may be the same company) announced that its first vessel, the *India*, would be launched in January 1839. It was to ply between Plymouth and Calcutta from April onwards, and would be followed by a further five ships which were in the course of construction or design. The company had been established by an Act of 1838 (described below),<sup>190</sup> and appeared still to be in existence in 1843.<sup>191</sup> The company's intention was to operate a steam ship service between Britain and Calcutta (now Kolkata) via the Cape of Good Hope, with a branch reaching onwards from the Cape to the Australian colonies. The company aspired to win one of the lucrative imperial mail-carrying contracts, but was unsuccessful.<sup>192</sup> As a consequence the company's operation never got off the ground. The mail contract went instead to the Peninsular and Oriental Steam Navigation Company ("P & O").<sup>193</sup>

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<sup>189</sup> The India Steam Ship Company, the East India Steam Ship Company, and the British India Steam Navigation Company.

<sup>190</sup> The Act received royal assent on 31 July 1838. The company's prospectus was published through the colonial press: see *Sydney Herald*, 19 November 1838.

<sup>191</sup> In November 1843 judgment for some £35,006 had been entered against the company (through one Henry Manning, its company secretary) in respect of non-performance of a contract. In 1847, action was taken against a former director, The Hon. Craven Berkeley, MP, for recovery of a share of the then outstanding damages: see *Scott v Berkeley* (1848) 3 Manning, Granger & Scott 925 (Common Pleas).

<sup>192</sup> See Frank Broeze, 'Distance tamed: steam navigation to Australia and New Zealand from its beginning to the outbreak of the Great War' (1989) in *The World of Shipping*, ed David M. Williams (Ashgate, Aldershot, UK 1997) at p 53.

<sup>193</sup> See Broeze (above) at p54. The Peninsular Steam Navigation Company (founded in 1837) changed its name to P & O in 1840 when its Iberian mail contract was extended to the East: see generally A. Riley, *Colourful maritime pageant will mark P & O's 175<sup>th</sup> anniversary*, *The Times*, 30 June 2012. P & O later merged with the (different) British India Steamship Company, although the latter retained its separate identity: see brief news report in *The Casterton News and the Merino and Sandford Record* (Melbourne, Victoria), 25 May 1914 (National Library of Australia).

3. Only three months after publication of the Company's prospectus, disquiet about the configuration of the Australia link was being expressed through the correspondence columns of a New South Wales newspaper. The business signatories said that the proposal for a "branch" arrangement was "imperfect" and "on a scale much too limited" to satisfy the increasing trading needs of the Australian colonies. Instead, steam communication between Australia and Great Britain should (they said) be carried on direct, underpinned by a separate and more substantial operating company.<sup>194</sup>

4. By 1847 (the date of the *Berkeley* litigation) the last meeting of the directors had been held, back in March 1839.<sup>195</sup> A notice was published in *The London Gazette* in September 1874, announcing a general meeting of the Indian Steam Ship Company to be held at its registered office in Liverpool, with a view to completing the winding-up of the company.<sup>196</sup> Whether the Indian Company and the India Company were one and the same is unclear: the probability is that they were.

5. The similarly named India Steamship Company, formed in 1928 and owned today by the K. K. Birla Group of Kolkata, is an unrelated entity.

#### *India Steam Ship Company Act 1838*

6. In 1838 certain entrepreneurs believed that "it would manifestly be for the advantage of the public that a line of steam communication should be established between this country [England] and India by way of the Cape of Good Hope, and between this country and Her Majesty's dominions in Australia".<sup>197</sup> However, because the venture called for a significant outlay of capital moneys and carried attendant "great risk", it was felt expedient to promote a joint stock company for the purpose. Additionally, in order to sustain the undertaking, to minimise the "great difficulty and risk of loss", and to maximise the return on the capital, it would be necessary to fit out the ships with particular boilers which were compact, safe, fuel efficient and "peculiarly adapted for steam vessels employed in very long voyages".<sup>198</sup>

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<sup>194</sup> See *The Australian* (Sydney, New South Wales) 12 February 1839. The writers of the letter also prayed in aid the expanding trade of Van Diemen's Land (later Tasmania), Port Phillip and South Australia with the "Mother Country".

<sup>195</sup> See *Scott v Berkeley* (above) at p 928.

<sup>196</sup> The general meeting was to be held on 20 October 1874 so that Alexander Stoddart, the liquidator, could explain how the winding-up and disposal of property had been handled: *London Gazette*, 18 September 1874, p 4443.

<sup>197</sup> From the preamble to 1 & 2 Vict. c.xcvii (1838) ("the 1838 Act"), being "An Act for forming and regulating a Company, to be called 'The India Steam Ship Company,' and to enable the said Company to purchase certain Letters Patent".

<sup>198</sup> Preamble to the 1838 Act.

7. Manufacture of the boilers in question was governed by a series of time-limited patents which had been granted to the boilers' designer, Thomas Brunton, and then to a civil engineer who had perfected the design, Elisha Collier.<sup>199</sup> Thomas Brunton also secured a patent for an apparatus designed for "distilling, brewing, making or refining sugar".<sup>200</sup>
8. Thomas Brunton died intestate in April 1833. His administrator, William Brunton, assigned the 1831 patents to John Stephens and Augustus Manning in February 1836. In April 1838 Elisha Collier sold his patents to Stephens and Manning.
9. The seven promoters of the shipping company (including The Hon. Craven Berkeley, MP, later to feature in the 1847 litigation)<sup>201</sup> needed parliamentary authority both to form the company as an entity and to purchase the various patents to benefit the company's undertaking.
10. The 1838 Act granted authority for the following purposes -
- (a) to authorise the establishment of the India Steam Ship Company, with shareholding proprietors, for conveying passengers, goods and merchandise by steam ship or packet between "Her Majesty's European Dominions" and India, Australia and "divers other places beyond Madeira", via the Cape of Good Hope<sup>202</sup>
  - (b) to authorise the transfer of the various letters patent to the company so that it could benefit from the improved boiler designs<sup>203</sup>
  - (c) to make provision for the company to conduct litigation (irrespective of whether members of the company were party to proceedings in their own right)<sup>204</sup>
  - (d) to make provision for the enrolment of the names of the company members and secretary in the High Court of Chancery<sup>205</sup>

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<sup>199</sup> Thomas Brunton was granted Letters Patent (for 14 years) by King William IV in April 1831 for England, Wales, Berwick-upon-Tweed and all the colonies and plantations abroad. Elisha Collier was granted Letters Patent (for 14 years) in July 1836 for Scotland and, later that month, for England, Wales, Berwick-upon-Tweed and all the colonies and plantations abroad.

<sup>200</sup> Letters Patent for Ireland granted in November 1831.

<sup>201</sup> See above.

<sup>202</sup> The 1838 Act, ss 1, 2.

<sup>203</sup> The 1838 Act, ss 3-5.

<sup>204</sup> The 1838 Act, ss 6-8.

<sup>205</sup> The 1838 Act, ss 9, 10 and Sch.



- (e) to make provision for the execution of judgments obtained in civil proceedings against the company and its members (subject to certain indemnities for costs), and for attachment to the property of the company<sup>206</sup>
- (f) to extend the provisions of the Act to all future members of the company whilst it remained in being,<sup>207</sup> and to make clear that the Act did not purport to incorporate the company or to relieve its members of any liability<sup>208</sup>
- (g) to set a ceiling on the company's capital or joint stock, with provision to increase the level with the consent of Treasury commissioners,<sup>209</sup> and
- (h) to enact that shares were to be transferable personal estate,<sup>210</sup> payable by instalments when subscription calls were made,<sup>211</sup> and subject to formal registration (both on initial issue and on transfer).<sup>212</sup>

#### *Status of the Act*

11. There appear to be no primary source archives relating to the India Steam Ship Company. The company was probably wound up during 1874.

12. On that basis the 1838 Act - which established the company - is now obsolete.

#### *Extent*

13. The 1838 Act related only to the affairs of the India Steam Ship Company, and dealt with (amongst other matters) invention patents operative in England, Wales, Berwick-upon-Tweed, Ireland and Scotland, and "all Colonies and Plantations abroad".<sup>213</sup>

14. The Act extended to the United Kingdom.

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<sup>206</sup> The 1838 Act, ss 11-13.

<sup>207</sup> The 1838 Act, s 14: shall extend to The India Steam Ship Company "at all times during the continuance of the same".

<sup>208</sup> The 1838 Act, s 15.

<sup>209</sup> The 1838 Act, s 16. The original capital or joint stock sum was £0.5 million, divided into £50 shares.

<sup>210</sup> The 1838 Act, s 17. Individual shares could be held jointly by several persons, although only one registered proprietor per share would be entitled to vote: 1838 Act, s 22.

<sup>211</sup> The 1838 Act, s 18. Whilst a call was pending (and unpaid) the shares were not to be transferable: 1838 Act, s 21.

<sup>212</sup> The 1838 Act, s 19. The forms of share certificate and of share transfer were prescribed by the Act: sections 19, 20.

<sup>213</sup> Preamble to the 1838 Act.

*Consultation*

15. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, the Department for Transport, Companies House, P & O Heritage (D P World), and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposal set out in this note.

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## INDIAN RAILWAYS

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<i>Reference</i>	<i>Extent of repeal</i>
Indian Railway Annuities (Sinking Funds) Act 1909 (9 Edw. 7 c.xxii)	The whole Act.

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### *Background*

1. The first passenger train in India ran on a newly constructed line in 1853, under the auspices of the Great Indian Peninsula Railway Company. From then until 1868, significant British private investment led to the creation of a dozen or more large railway companies (and many smaller), with operations stretching across British India and Ceylon.<sup>214</sup>

2. The East India Company (acting in a quasi-public role)<sup>215</sup> facilitated the investment process by providing a system of public guarantees. This arrangement meant that the railway companies and their private investors would bear the construction and operating costs, and would own the undertakings, but the East India Company - acting for government - would provide the necessary land without cost, offer 99-year operating contracts (with break clauses and options to purchase), and guarantee shareholders a 5% return on their capital investment.

3. From 1868 onwards, the government of India started to develop the railway network as a form of state enterprise, either by acquiring existing undertakings through the guarantee surrender mechanism, or by direct investment and construction.<sup>216</sup> The railway companies became, in the main, simply operating companies running the undertakings for government.<sup>217</sup>

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<sup>214</sup> For more background see the Law Commission's two publications: the consultation paper *Statute Law Revision: Indian Railways Repeal Proposals* (August 2007) and the final report *Statute Law Repeals: Nineteenth Report* (Law Com No 333, April 2012) at Part 3 Indian Railways.

<sup>215</sup> This role ceased in 1858 when the British Crown assumed direct governance of British India (via the newly created secretary of state in council of India), following the Company's handling of the Sepoy Rebellion of 1857.

<sup>216</sup> The Calcutta and South-Eastern Railway was the first undertaking to be transferred to the Indian government.

<sup>217</sup> Nationalisation of railway management did not occur until 1925 onwards.

4. Formal transfer of operating assets was secured by a series of railway purchase Acts which provided for the vesting of the relevant undertakings in the secretary of state, and the termination of various contracts. Additionally, the legislation would provide for an accumulating sinking fund (to be paid out as capital on the fund maturing), with different classes of annuity holder.

5. Purchase arrangements and sinking funds were established for (put chronologically) -

- (a) the East Indian Railway Company in 1879<sup>218</sup>
- (b) the Eastern Bengal Railway Company in 1884<sup>219</sup>
- (c) the Scinde, Punjab and Delhi Railway Company in 1886<sup>220</sup>
- (d) the Great Indian Peninsula Railway Company in 1900,<sup>221</sup> and
- (e) the Madras Railway Company in 1908.<sup>222</sup>

6. The East Indian Railway Company scheme involved acquisition by the secretary of state in January 1880 of two undertakings operated by the company so as to provide management continuity. The purchase was to be by way of annuity, chargeable on the revenues of India and terminable in February 1953, leaving the company to work the various lines. The arrangement also involved the creation of a statutory sinking fund, funded by one of the two classes of annuity holder (Class B), maturing also in February 1953.<sup>223</sup> The railway company was dissolved sometime in the 1930s.

7. The Eastern Bengal Railway Company transfer scheme encompassed a similar arrangement. The company's undertaking was purchased by the secretary of state in June 1884 through an annuity charged on the Indian revenues, and expiring in 1957. A sinking fund, to provide a capital distribution in July 1957 for Class B

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<sup>218</sup> By the East Indian Railway Company Purchase Act 1879 (42 & 43 Vict. c.cvi) ("the 1879 Act").

<sup>219</sup> By the Eastern Bengal Railway Company Purchase Act 1884 (47 & 48 Vict. c.civ) ("the 1884 Act").

<sup>220</sup> By the Scinde, Punjab and Delhi Railway Purchase Act 1886 (49 & 50 Vict. c.xlii) ("the 1886 Act").

<sup>221</sup> By the Great Indian Peninsula Railway Purchase Act 1900 (63 & 64 Vict. c.cxxxviii) ("the 1900 Act").

<sup>222</sup> By the Madras Railway Annuities Act 1908 (8 Edw.7 c.iii) ("the 1908 Act").

<sup>223</sup> The 1879 Act, ss 18-26. Annuity holders were the company's former stock holders. Class A annuitants were those who elected to receive their annuities in full; Class B annuitants were those who opted to receive their annuity less a contribution to the sinking fund, leading to an apportioned distribution of the fund in February 1953. The deductions were to be held by the East Indian Sinking Fund Trustees, and the accruing fund was to be invested in specified securities.

annuitants, was put in place alongside.<sup>224</sup> The company itself was dissolved in or about 1887.

8. The Scinde, Punjaub and Delhi Railway Company was formed from an amalgamation in 1870. Its undertaking was acquired by the secretary of state in 1886. The purchase was again by the instalment annuity method, payable from the revenues of India and expiring in December 1958. The supplemental sinking fund for the Class B annuitants was to be apportioned and distributed in 1959.<sup>225</sup> The company was dissolved, probably shortly after 1886.

9. The Great Indian Peninsula Railway Company assets were purchased by the secretary of state in June 1900 under the break clause in the original guarantee agreement. Payment was by annuity, ending in August 1948. The sinking fund for the Class B annuitants was to be vested in special trustees, and was to be apportioned and distributed also in August 1948.<sup>226</sup> The company was almost certainly dissolved, probably shortly after 1900.

10. The Madras Railway Company's undertaking and assets were purchased by the secretary of state in January 1908 - pursuant to a January 1871 contract - by a series of annuity instalments, the last of which was due to be paid in April 1956. A sinking fund, held in trust by sinking fund trustees, was established for the Class B annuitants. The sinking fund was to mature also in April 1956, at which time it would be distributed.<sup>227</sup> The Madras Railway was amalgamated with the Southern Mahratta Railway Company in 1908, and government took over the company in April 1944. The Madras and Southern Mahratta Railway Company was formally dissolved in February 1950.

11. Each of the purchase Acts from 1879 to 1908 authorised the sale of the relevant railway company's assets to the secretary of state on the basis of a deferred payment arrangement, using annuities and sinking funds, thus leaving the railway company merely as a traffic operator. In several instances the purchase Act provisions relating to sinking funds were supplemented by later legislation.

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<sup>224</sup> The 1884 Act, ss 15-21. The Class B annuitants (who were former stockholders) elected to receive partial annuities with a contribution to the sinking fund (which fund was to be established by the Bank of England).

<sup>225</sup> The 1886 Act, ss 12-35. The sinking fund was to be held in trust for the qualified annuitants by the Bank of England.

<sup>226</sup> The 1900 Act, ss 21-35.

<sup>227</sup> The 1908 Act, ss 17-25.

### *The Indian Railway Annuities (Sinking Funds) Act 1909*

12. In 1909 “doubts [had] arisen” as to whether the body or bodies charged with investing the various sinking funds’ moneys could lawfully invest those moneys in the purchase of “annuities Class B”.<sup>228</sup> The *Indian Railway Annuities (Sinking Funds) Act 1909*<sup>229</sup> provided the necessary parliamentary authorisation together with retrospective sanction for any ‘B’ annuities already purchased. In particular the Act laid down that -

- (a) notwithstanding anything in the purchase Acts each Act was to be construed as if it expressly stated that ‘B’ annuities were securities in which annuity trustees could lawfully invest moneys for one of the sinking funds<sup>230</sup>
- (b) the annuity trustees were to invest the half-yearly annuity from the secretary of state in authorised securities, including any portion distributable as ‘B’ annuities, in the names of the relevant sinking fund trustees<sup>231</sup>
- (c) the annuity trustees were required to enter particulars of any ‘B’ annuities purchased under the Act in a special register, and to transfer to it entries from any previous register of ‘B’ annuities,<sup>232</sup> and
- (d) the sinking fund trustees were precluded from participating in their personal capacity in any division of sinking fund accumulations which were invested in ‘B’ annuities.<sup>233</sup>

### *Status of the 1909 Act*

13. The 1909 Act related to the investment of sinking fund moneys for five railway companies. In each instance the railway company has been dissolved and the attached sinking fund had been distributed over the period 1948 to 1959. By the time of India’s and Pakistan’s independence in 1947 their railway infrastructure network had been fully nationalised by government.

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<sup>228</sup> See preamble to 9 Edw.7 c.xxii (1909), discussed below.

<sup>229</sup> 9 Edw.7 c.xxii (1909) (“the 1909 Act”). Section 1 of the Act provided its short title, and section 2 defined “the purchase Acts” as those of 1879, 1884, 1886, 1900 and 1908. Annuity trustees were defined as persons making investments to provide a sinking fund, and sinking fund trustees were defined as persons who held those investments.

<sup>230</sup> The 1909 Act, s 3. The section also provided that any investment made before the passing of the Act “shall be deemed to have been lawfully made”.

<sup>231</sup> The 1909 Act, s 4. The sinking fund trustees were then required to hold the invested securities for the fund.

<sup>232</sup> The 1909 Act, s 5.

<sup>233</sup> The 1909 Act, s 6. Sections 4 and 6 were drafted in immensely obscure language.

14. Each of the railway company purchase Acts (1879 to 1908) referred to in the 1909 Act has been repealed by the Statute Law (Repeals) Act [2013].<sup>234</sup>

15. Section 6 of the 1909 Act, which provided that sinking fund trustees were not to participate in the division of sinking funds, was saved by the Great Indian Peninsula Railway Annuities Act 1927.<sup>235</sup> The 1927 Act has also been repealed by the Statute Law (Repeals) Act [2013].

#### *Extent*

16. The 1909 Act related to five railway companies which were based in Great Britain and operated within what was then British India (today principally India, Pakistan and Bangladesh).

17. Although the 1909 Act did not on its face define its extent, its extent was determined by the extent of the five purchase Acts it was designed to supplement.

#### *Consultation*

18. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, Companies House, the Bank of England, the High Commissions for India, Pakistan and Bangladesh, and the relevant authorities in Northern Ireland (where the 1909 Act probably did not apply), Scotland and Wales have been consulted about the repeal proposals set out in this note.

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<sup>234</sup> 2013 (c. -), s 1 and Sch 1 Pt 3. [At the time of writing the 2012 Bill has not yet secured parliamentary approval].

<sup>235</sup> 17 & 18 Geo.5 c.v (1927), s 8.

## LIVERPOOL EAST INDIA WAREHOUSE COMPANY

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<i>Reference</i>	<i>Extent of repeal</i>
3 & 4 Vict. c.vi (1840) (Liverpool East India Warehouse Company Act)	The whole Act.

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### *Background*

1. The *East India Trade Acts 1813 (54 Geo.3 cc. 34 & 35)*<sup>236</sup> withdrew the East India Company's general trading monopoly with India, and opened up competition for trade between India and Britain. In the preceding years the city of Liverpool had suffered commercially through abolition of the slave trade and the deterioration of relations (and the market) between Britain and America.

2. As Atlantic trade dried up Liverpool's merchants sought out other trading destinations, principally in the East Indies. The Liverpool East India Association was established initially as a lobbying organisation, with the ambition of removing the East India Company's trading monopoly with India. Post-1813 it continued to lobby government for the removal of competition restrictions on trade with China, an aim achieved in 1833.<sup>237</sup>

3. By 1836 Liverpool had become the main sea outlet for exporting British manufactured cotton products to the east, and a major port for importing sugar from Mauritius; tea, silk and cotton from China (warehoused on Liverpool's Albert Dock, which opened in July 1846); and sugar, rice, spices, cotton and wool from India. By the mid-1840s it was estimated that Liverpool had some 1,400 warehouses on its various dock fronts and inland, two-thirds of which were used for imported cargoes.<sup>238</sup>

4. The Liverpool Association became a key player in forming a trans-imperial network of commercial groups with Asian interests, and survived until the mid-1870s. The Albert Dock, amongst others, was at its busiest in the 1850s and 1860s, and revenues generated by warehousing operations as a whole outshone those from the

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<sup>236</sup> The 1813 Acts were repealed in 1823 and 1873 respectively.

<sup>237</sup> See generally article by Tony Webster, *Liverpool's Asian Networks 1800-1914* (published by Liverpool John Moores University).

<sup>238</sup> See Graeme J. Milne, *Trade and Traders in Mid-Victorian Liverpool* (Liverpool UP, 2000) at p 81.



dock business. However, the advent of steam vessels, which required greater draught and turning space for manoeuvring than sailing ships, impacted adversely on Liverpool's trading supremacy (outside the Port of London). By the 1870s a significant amount of trade had diverted to Birkenhead, which had better rail links to the textile industries of Manchester.<sup>239</sup>

#### *Liverpool East India Warehouse Company*

5. The Liverpool East India Warehouse Company had been formed to carry on the business of warehouse keeper, storing goods and merchandise in warehouses and "other places of secure deposit" in Liverpool<sup>240</sup> and within a five mile radius of the port, and both to ship and land such goods and merchandise.

6. The *Liverpool East India Warehouse Company Act 1840*<sup>241</sup> was sought by "the company or partnership" to facilitate the legal recovery of debts or damages. Without the Act all subscribing members of the warehouse company had to be named in legal proceedings, which had the potential to be cumbersome. Accordingly, the 1840 Act, in broad terms -

- (a) authorised legal action by the company to be carried on in the name of the chairman or deputy chairman or one of the directors or past office holders (acting as nominal plaintiff), and legal proceedings against the company to be brought against one of these office holders as a representative defendant<sup>242</sup>
- (b) required a "memorial" of the names of the office holders and proprietors to be enrolled (in prescribed form) in the High Court of Chancery, together with details of any share transfers<sup>243</sup>
- (c) provided that, where judgment was entered against the company's chairman, deputy chairman or a director, that individual was to be reimbursed by the company for all damages or expenses incurred; and, in the event that a judgment was not satisfied, the successful

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<sup>239</sup> Milne (above) at p 83.

<sup>240</sup> See preamble to 3 & 4 Vict. c.vi (1840), below.

<sup>241</sup> 3 & 4 Vict. c.vi (1840) ("the 1840 Act").

<sup>242</sup> The 1840 Act, s 1. Likewise, any criminal proceedings (by indictment or information) for fraud, embezzlement or theft concerning the company's property were to be instituted in the same way. The validity of proceedings (civil or criminal) involving persons who were proprietors or partners in the company was to be unaffected by such interest: the proceedings would be conducted "as if the same had been between strangers": section 2.

<sup>243</sup> The 1840 Act, s 3 and Sch. Enrolment (to be effected within three months) was to be by solemn declaration. The making of any false declaration was to be construed as an offence (misdemeanour): section 10. Pending enrolment the company was barred from issuing any form of legal proceedings, and individual shareholders would be liable for any judgment against the company: section 4.

party was to be entitled to seek recompense (subject to leave of the court) from any proprietor of the company<sup>244</sup>

- (d) provided that proprietors and past proprietors of the company to whom dividends or a share of the profits were due could bring proceedings for recovery in a court of equity against the chairman, deputy chairman or a director who, in turn, could bring proceedings against any proprietor or proprietors<sup>245</sup>
- (e) made clear that the Act would continue to apply notwithstanding any change of proprietors or partners, and that the Act did not purport to incorporate the company or to relieve the company or its proprietors from any liability,<sup>246</sup> and
- (f) made provision for certain ancillary matters.<sup>247</sup>

#### *Status of the Act*

7. There appear to be no archives relating to the Liverpool East India Warehouse Company. The company was not incorporated and probably ceased to exist as an entity in the mid-1870s.

8. On that basis the 1840 Act - which dealt simply with the ability of the warehouse company to conduct litigation - is now obsolete.

#### *Extent*

9. The 1840 Act related solely to the activities of the warehouse company in and around the Port of Liverpool.

10. The 1840 Act extended to England and Wales only.

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<sup>244</sup> The 1840 Act, s 5. The section also provided that the extent of the liability of the company's proprietors was not to be restricted. By section 6 any court judgment against the chairman, deputy chairman or a director was deemed to be enforceable against each and every one of the company's proprietors (notwithstanding the fact that they may not have been parties before the court).

<sup>245</sup> The 1840 Act, s 7. No claim for dividends or interest brought by a proprietor could be set off against any form of claim against that person by the company: section 8.

<sup>246</sup> The 1840 Act, ss 11, 12.

<sup>247</sup> The 1840 Act, s 9.

*Consultation*

11. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, the Department for Transport, Companies House and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposal set out in this note.

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## MADRAS AND EAST INDIA IRRIGATION AND CANAL COMPANIES

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<i>Reference</i>	<i>Extent of repeal</i>
Madras Irrigation and Canal Act 1858 (21 & 22 Vict. c.viii)	The whole Act.
East India Irrigation and Canal Act 1861 (24 & 25 Vict. c.cviii)	The whole Act.
Madras Irrigation and Canal (Accounts) Act 1863 (26 & 27 Vict. c.clxxxi)	The whole Act.
East India Irrigation and Canal Act 1866 (29 & 30 Vict. c.ccci)	The whole Act.
Madras Irrigation and Canal Act 1866 (29 & 30 Vict. c.cccii)	The whole Act.
East India Irrigation and Canal Act 1869 (32 & 33 Vict. c.7)	The whole Act.
Madras Irrigation and Canal Act 1872 (35 & 36 Vict. c.lxi)	The whole Act.

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### *Background*

1. Canal-building within the Indian subcontinent started in 1817, under British colonial administration, and continued thereafter. Its main purpose was to facilitate irrigation and conversion of wasteland for agricultural use. The revenue-earning from such land would be enhanced, and the incidence of famine caused by drought reduced. From 1849 onwards, when the Sikh army was disbanded, thousands of former soldiers lost productive employment and turned to anti-social behaviour and criminal activity. Redeployment on canal construction, and subsequent resettlement, provided something of a solution.<sup>248</sup>

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<sup>248</sup> See M. Jurriens, P.P. Mollinga and P. Wester *Protective Irrigation in India and Pakistan* (1996, Wageningen Agricultural University), chap 2.1, p 3.

2. The cost of irrigation construction was so substantial that the British government decided initially that it should be carried out by private enterprise. In 1857 the Madras Irrigation and Canal Company was formed. It was empowered to raise capital of £2 million, and started constructing schemes in 1863.<sup>249</sup> It operated until 1882 when it was bought out by government. The company then ceased to exist.<sup>250</sup>

3. A second company - the East India Irrigation Company - was formed in 1860 to undertake development of the Mahanadi delta in Orissa (covering some 1.5 million acres of land), where works of irrigation and navigation were to be linked by canal to Calcutta (today Kolkata). This irrigation company had similar capital-raising powers, and also started construction work in 1863. However, by 1867 the Orissa project was suffering financial failure. In 1869 the government bought out the company. From 1866 onwards, government had decided that future canal irrigation projects should be run directly by the state, financed not from general revenues but through loans taken out by the government of India.<sup>251</sup>

#### ***The Madras Irrigation and Canal Company***

4. The Madras Irrigation and Canal Company had been incorporated for the purpose of undertaking works of irrigation and creation of navigable canals, with a view to improving both water supply and transportation within the Madras presidency and neighbouring territories.<sup>252</sup> In order to undertake the necessary works, either on its own or in conjunction with the East India Company or the “supreme or other local governments of India”, the irrigation company needed further incorporation and additional statutory powers.<sup>253</sup>

5. The *Madras Irrigation and Canal Company Act 1858*<sup>254</sup> provided (in broad terms) that -

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<sup>249</sup> The contract between the secretary of state and the irrigation company - under which the government would take a share of the net profits and, in exchange, would provide all the requisite land - was executed in June 1863. Estimates for the selected scheme, involving excavation of a canal from the river Tungabhadra at Kurnool through to Cuddapah (today Kadapa), had been approved in 1860: see Dharma Kumar, Tapan Raychaudhuri, Irfan Habib and Meghnad Desai, *The Cambridge Economic History of India* (Cambridge UP, 1983), vol 2 c.1757-c.1970, at p 694.

<sup>250</sup> See Jurriens, Mollinga and Wester (above) at p 4, n 2.

<sup>251</sup> Jurriens, Mollinga and Wester (above) at p 4, n 2.

<sup>252</sup> Today the city of Madras is called Chennai. The neighbouring territories were: Berar, Mysore, Nagpore (now Nagpur), Orissa and South Mahratta: see preamble to 21 & 22 Vict. c.viii (1858), below.

<sup>253</sup> See preamble to 21 & 22 Vict. c.viii (1858), below.

<sup>254</sup> 21 & 22 Vict. c.viii (1858) (“the 1858 Act”). The short title to the Act was assigned by section 31.

- (a) the irrigation company be incorporated for the purposes of the construction, improvement and management of irrigation works, navigable canals and tramways (including the provision of steam and other vessels and engines), and the construction of water supply works (for domestic and business consumption)<sup>255</sup>
- (b) the incorporated company automatically have vested in it all property previously held by the irrigation company, and the benefits and liabilities of all contracts previously entered into. The incorporated company could also purchase up to two acres of land in England for the purposes of its undertaking<sup>256</sup>
- (c) the various provisions of the Companies Clauses Consolidation Act 1845, as applied by the 1858 Act, have effect in India as well as in England<sup>257</sup>
- (d) the incorporated company be empowered to enter into contracts with the East India Company (“on account of the government of India” or the supreme or local governments) in respect of any matter which would facilitate the “making of surveys and preliminary arrangements”; which would enable the East India Company or the governments to guarantee interest on the company’s capital; which would secure various rights to the East India Company in respect of the works or application of revenues, rents, tolls and the like; and which would afford the East India Company the right to control both the incorporated company and its affairs and proceedings, in England and elsewhere<sup>258</sup>
- (e) arrangements be in place for the issue and registration of shares<sup>259</sup>

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<sup>255</sup> The 1858 Act, ss 1, 2. Each of these functions could be carried out by the incorporated company alone, or in conjunction with the East India Company or any other body. However, no tolls were to be exacted for use of the various works without prior sanction by “an Act of the Indian legislature”: section 2. By section 5 the regulation provisions of the Joint Stock Companies Acts 1856 and 1857 were to be disapplied and replaced by the Companies Clauses Consolidation Act 1845 (“the 1845 Act”) (as if part of the 1858 Act), both for India and for England.

<sup>256</sup> The 1858 Act, ss 3, 4.

<sup>257</sup> The 1858 Act, s 6. The provisions embraced the making of byelaws by the company (so long as not repugnant to the laws of India); the making of calls on subscribing shareholders; the giving of notice of share forfeiture in the *Government Gazette* in Madras; the representation of the company in India in matters of bankruptcy and insolvency; and the validity of certain declarations made in India before a magistrate or any supreme court of judicature.

<sup>258</sup> The 1858 Act, s 7. The East India Company also had power to appoint an *ex officio* director to the board, to veto board decisions, and to require the incorporated company to fulfil directions given to it by the East India Company or the Indian governments. The East India Company could grant or lease land to the incorporated company and, likewise, the incorporated company could lease or sell its property (including the works, canals and tramways) to the East India Company or the various governments.

<sup>259</sup> The 1858 Act, ss 8-13. The company was authorised to establish share registration offices in India, to regulate the transfer and registration of shares (all the relevant powers in the 1845 Act as applied in Great Britain were also to apply in India), and to maintain registers of shareholders, consolidated stock, transfers, mortgages and bonds, and debentures in India. By section 13 the location of a particular share register (in India or Great Britain) would determine the application of the relevant law on any question arising.

- (f) the incorporated company's initial capital should be £2 million (in 100,000 £20 shares), with power to increase that sum to £4 million,<sup>260</sup> and the company could borrow on mortgage once the whole of the capital was subscribed for<sup>261</sup>
- (g) arrangements be in place for the holding of shareholder annual general meetings from July 1858 onwards,<sup>262</sup> and
- (h) the incorporated company be authorised to appoint between seven and 21 directors in London, and a further seven directors solely for India.<sup>263</sup>

6. The initial "arrangement" to co-operate with the newly incorporated company was entered into by the secretary of state in council in December 1858, just seven months after the passing of the 1858 Act. That arrangement specified that the company should, in the first instance, concentrate its resources on one project, to be approved by the "local government" in India and costing up to £1 million. The secretary of state would guarantee 5% p.a. minimum interest on that sum.<sup>264</sup> The government of Madras selected a scheme of works consisting of a main irrigating canal and storage reservoirs, known as the Toombuddra project. The canal was divided into three portions: the Bellary section (Wallavapoor to Soonkasala), the Soonkasala to Cuddapah section, and the Nellore section (Cuddapah to Kistnapatam).

7. By 1863 the incorporated company had raised £1 million in capital (in £20 shares), and had entered into a formal agreement with the secretary of state in council of India<sup>265</sup> whereby the company undertook to execute water supply works for irrigation and navigation purposes. The estimated cost of the works exceeded the amount of capital thus far raised. The secretary of state agreed to pay 5% p.a. interest on the first £1 million raised, and the company agreed to raise a further £1 million by a second share issue. Although the company had power to raise additional capital, it lacked the ability to hold the moneys separately for different undertakings.

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<sup>260</sup> The 1858 Act, ss 14, 15. The capital raised was to carry into effect any contract with the East India Company or the supreme or local governments in India. The shares were to be subject to calls of up to £5 per share at 3-monthly intervals, and shares could be consolidated by the company: sections 16, 17.

<sup>261</sup> The 1858 Act, s 28.

<sup>262</sup> The 1858 Act, s 18. Provision was made by sections 20 to 22 for quorums, proxy voting and taking of polls. Where notices of proceedings of the company in Great Britain had to be advertised they were to be placed in newspapers published daily in London or Middlesex: section 30.

<sup>263</sup> The 1858 Act, ss 23-25. Directors were to hold a minimum of 50 shares (section 26), and could be removed from office by special resolution in general meeting (section 27).

<sup>264</sup> See preamble to The Madras Irrigation and Canal Act 1872 (35 & 36 Vict. c.lxi), which is discussed in more detail later in this note.

<sup>265</sup> By indenture dated 3 June 1863, comprising a preamble and 40 clauses.

8. The *Madras Irrigation and Canal (Accounts) Act 1863*<sup>266</sup> was designed to give the necessary authority. The 1863 Act provided that (put broadly) -

- (a) the purposes of the company be extended beyond those in the 1858 Act<sup>267</sup> to include improvements to the navigation of rivers and waterways, the construction and working of mills adjoining canals and tramways, the cultivation of timber and other soil products, the working of mines, and the undertaking of smelting, furnace and gas manufacture<sup>268</sup>
- (b) the benefit of the secretary of state's undertaking (set out in the agreement)<sup>269</sup> to pay or guarantee interest on the capital sum of £1 million at the rate of 5% p.a. be attached to the owners of that capital sum<sup>270</sup>
- (c) the company be permitted to raise the balance of the authorised £2 million capital,<sup>271</sup> but the share issue was to be kept distinct from the previous issue so that the purposes of the 1863 Act would be preserved. The company was also permitted to borrow up to one-third of the capital then raised, subject to not making any charge on the irrigation works for southern India<sup>272</sup>
- (d) any capital raised by the company for a particular undertaking could be kept distinct from other capital, with separate capital and revenue accounts, and the moneys raised by share issue would be applied only for that undertaking<sup>273</sup>
- (e) the directors could invest unused capital in real estate or government securities and, during progress of the works, pay out interest to shareholders on their holdings up to 5% p.a.<sup>274</sup>

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<sup>266</sup> 26 & 27 Vict. c.cxxxii (1863) ("the 1863 Act"). The short title to the Act was assigned by section 15.

<sup>267</sup> Above.

<sup>268</sup> The 1863 Act, s 2. The power to sell and dispose of worked or manufactured produce was also included.

<sup>269</sup> The agreement of June 1863 was referred to in the preamble to the 1863 Act, and its text was recited in the Schedule to the Act.

<sup>270</sup> The 1863 Act, s 3.

<sup>271</sup> Provided for in section 15 of the 1858 Act. The creation of preference shares was prohibited.

<sup>272</sup> The 1863 Act, s 4. The agreement referred to the scheme of works as the "Toombuddra Project" (after the name of the river - now the Tungabhadra river - which would provide the source waters).

<sup>273</sup> The 1863 Act, ss 5-8. This separation could ensure that subscribing shareholders would be responsible only for calls relating to the particular project and, equally, would only be entitled to participate in the profits arising from that project. Similarly, the rights of lenders on mortgage or bond would be ring-fenced to the project. Section 9 provided that, notwithstanding the shareholding separation, shareholders as a whole would still meet in general meeting to make decisions on "one united capital", subject to the chairman having the right to exclude discussion and voting by some shareholders where decisions were to be taken on one of the particular projects.

<sup>274</sup> The 1863 Act, ss 10, 11.



- (f) shareholders be entitled to act as proxies for an unlimited number of other shareholders (and the limit on proxy holding in the 1858 Act<sup>275</sup> be repealed),<sup>276</sup> and
- (g) the number of directors specified in the 1858 Act for appointment be varied to no more than 21 and not less than five, excluding any *ex officio* appointment by the secretary of state.<sup>277</sup>

9. By 1866 the incorporated company needed a supplementary arrangement with the secretary of state whereby it could draw down additional moneys (up to £600,000) from the India Office and the government of Madras, secured by debenture, for the Toombuddra project. The contemplated arrangement was to be time-limited to five years, at which point the company would either repay the loan, having completed the project “in perfect working order”, or, having failed to complete the project, would convey the canal and works to the secretary of state.<sup>278</sup>

10. In order to put a supplementary arrangement into effect, specific parliamentary authority was required. The *Madras Irrigation and Canal Act 1866*<sup>279</sup> provided that -

- (a) the directors of the company could raise a loan from the secretary of state of such moneys (to a maximum of £600,000, secured on debenture) as would be required over the next five years to construct the canal and works within the Toombuddra project, extending from Soonkasala to Cuddapah (the second portion)<sup>280</sup>
- (b) should the company fail to complete the agreed canal works by 1 July 1871, the secretary of state in council would be entitled to require the company to transfer the works and ancillary buildings and plant, subject

<sup>275</sup> Section 21 of the 1858 Act (see above) had limited the number of proxies capable of being held by a single shareholder to 20.

<sup>276</sup> The 1863 Act, s 12.

<sup>277</sup> The 1863 Act, s 13.

<sup>278</sup> See preamble to 29 & 30 Vict. c.cccii (1866), below. The arrangement was to run from 1 July 1866 (and was not to affect the original contract of June 1863). If the project were transferred to the government at the end of five years the government would pay the company, in India Government 5% stock, the value of the capital expended on the works. On that occurring, the company would be absolved from all existing liabilities.

<sup>279</sup> 29 & 30 Vict. c.cccii (1866) (“the 1866 Act”). The short title to the Act was given by section 1, and section 2 provided that all three Madras Irrigation and Canal Acts were to be construed as one. The Act’s purpose was to facilitate carrying into effect the contemplated “supplementary arrangement” (section 3) but, notwithstanding the Act, the secretary of state in council was under no binding obligation to enter into the proposed arrangement: section 8.

<sup>280</sup> The 1866 Act, s 3 and Sch (Form A debenture). Each debenture, in prescribed form, was to be repayable at the end of five years and would carry interest at the rate of 5% p.a. as a first charge on all profits arising from the company’s activities (but without prejudicing the rights of existing shareholders under the June 1863 agreement).

- to the company then being compensated for moneys already invested and expended on the project (less the balance outstanding on the sum previously loaned to the company)<sup>281</sup>
- (c) the directors could at any time raise a secured loan to pay off debentures given to government<sup>282</sup>
  - (d) a procedure be put in place for the cancellation of shares where the registered holder had failed to honour calls for payment, and for the issue and sale of shares in lieu of those forfeited<sup>283</sup>
  - (e) the directors be empowered to issue new ordinary shares (with a minimum value of £10 per share) or ordinary stock so as to raise capital<sup>284</sup>
  - (f) the company in general meeting be empowered to raise moneys by the issue of debenture stock in place of mortgage or other loan mechanism, with preferential interest at 7% p.a., subject to adhering to the provisions of section 8 of the 1863 Act (which ring-fenced the application of moneys raised for a particular project to that undertaking),<sup>285</sup> and
  - (g) nothing in the 1866 Act could authorise the company to raise moneys by the issue of debenture stock where, for a particular project, the secretary of state in council had already guaranteed the interest or dividend payable.<sup>286</sup>

11. The “supplementary arrangement” was embodied in a formal contract between the parties made in October 1866 and, under it, the secretary of state

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<sup>281</sup> The 1866 Act, s 4. By section 5 it was made patent that the supplementary arrangement was not to affect the agreement of June 1863 although, on any sale and transfer of the company's assets, the obligation to pay interest on the £1 million capital would cease.

<sup>282</sup> The 1866 Act, s 6.

<sup>283</sup> The 1866 Act, ss 9-16. Cancellation of shares was not to affect the liability of the last registered holder to pay all arrears of calls, plus interest and expenses. Provision was also made for the voluntary cancellation or surrender of unpaid shares.

<sup>284</sup> The 1866 Act, ss 17-25. Unissued new shares or stock could be cancelled by the company. New shares and stock could be offered, on a time-limited basis, to existing share and stock holders, apportioned according to the particular project for which the original holding was issued. Share and stock holders were deemed to live in England, Scotland, Ireland or India for the purpose of offer letters (section 20) For the purpose of voting in shareholding meetings shareholders' votes were governed by the size of their shareholding (deemed to be in £20 units).

<sup>285</sup> The 1866 Act, s 26. By sections 27 to 35 debenture stock was to be a charge on the assets of the particular undertaking of the company, having priority (together with the interest payable) over existing shares or stock issued for that undertaking; arrears of interest were to be recoverable legally from the company; debenture stock was to be registered and certificated separately, according to the undertaking for which it was issued (and separate company accounts were to be maintained); and debenture stockholders were not to be entitled to vote in general meetings. By section 36, to the extent that debenture stock had been issued, the powers of the company to borrow by other means were “extinguished”.

<sup>286</sup> The 1866 Act, s 37. Moreover, by section 38, no mortgage or debenture holder had any rights over the secretary of state's guaranteed interest payments, which belonged solely to the holders of the first 50,000 shares issued.

advanced £600,000 to the company in return for the issue of debentures redeemable five years later. The company then used the moneys in constructing the Soonkasala to Cuddapah section of the project, and preparing plans and estimates for the remaining sections.

12. By 1871 the advance had become repayable but the company had “no means of raising the sum required to pay the amount thereof” except by additional borrowing.<sup>287</sup> However, “in consequence of doubts which have arisen”<sup>288</sup> as to the extent of borrowing powers under the 1866 Act (above),<sup>289</sup> additional legislation was required. The company gave public notice in March 1872 of its intention to apply to parliament for an Act “to explain and amend” the earlier legislation, with a view to raising moneys to pay off the secretary of state’s debentures.<sup>290</sup>

13. The *Madras Irrigation and Canal Act 1872*<sup>291</sup> provided that the interest on all mortgages, bonds and debentures issued under section 6 of the 1866 Act were to be a first charge on the profits arising from the Toombuddra project, notwithstanding any provisos in previous legislation or the June 1863 contract. This provision was not, however, to affect - adversely or otherwise - the secretary of state’s guarantee of interest payable to the owners of the £1 million capital sum, whilst that guarantee remained live.<sup>292</sup>

### ***The East India Irrigation and Canal Company***

14. The East India Irrigation and Canal Company was the second canal company to be formed, in August 1860. Its purpose was to facilitate the construction and operation of works for irrigation, combined with navigable canals, and to afford water supply and transport facilities, in the dominions of the East Indies and, more particularly, in the province of Orissa.<sup>293</sup>

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<sup>287</sup> See preamble to 35 & 36 Vict. c.lxi (1872), discussed below.

<sup>288</sup> Preamble to 35 & 36 Vict. c.lxi (1872).

<sup>289</sup> And more particularly whether mortgage, bond and debenture holders (under section 6 of the 1866 Act) would be entitled to the same priority for payment of interest as applied to the secretary of state on his debenture holding.

<sup>290</sup> Notice in *The London Gazette* 5 March 1872 at p 1319.

<sup>291</sup> 35 & 36 Vict. c.lxi (1872) (“the 1872 Act”). The short title to this very short Act (preamble and four sections) was assigned by section 1.

<sup>292</sup> The 1872 Act, s 3. Section 2 of the Act provided that all the statutes relating to the Madras Irrigation and Canal scheme (1858 to 1872) were to be construed as a single Act.

<sup>293</sup> See preamble to 24 & 25 Vict. c.cviii (1861), discussed below. The irrigation and navigation works were designed to affect the deltas of the rivers Mahanuddy (today Mahanadi), Byturny (or Byturnee, today Baitarani) and Brahmany (today Brahmani), which were to be connected by canal to Calcutta (Kolkata).

15. In order to carry into effect these various works, which were likely to be “of great public advantage”, the company required statutory incorporation. The *East India Irrigation and Canal Act 1861*<sup>294</sup> provided that (put in broad terms) -

- (a) the various shareholders of the East India Irrigation and Canal Company were to be united as a body corporate for various purposes including the construction, maintenance and management of irrigation works; the improvement of the navigability of rivers and operation of tramways; the levying of tolls; the carrying of passengers and goods; the use and hire of steam vessels; the construction and management of water supply works, and the supply of water to government and commerce; the working of mills; the cultivation of timber; and the working of coal mines, iron and gas works, and smelting houses<sup>295</sup>
- (b) the incorporated company was to have vested in it all property and records held by the former company, together with the benefits and liabilities attaching to all previous contracts, and was to be able to purchase and hold up to two acres of land in England<sup>296</sup>
- (c) company-made byelaws were not to be repugnant to the laws of India, and the Indian supreme courts of judicature were to have the same jurisdiction as the English courts for actions enforcing payment of calls on shares<sup>297</sup>
- (d) the company’s capital, initially, was to be £2 million (in 100,000 £20 shares), with power to increase that sum as and when required to honour government contracts<sup>298</sup>
- (e) the company could establish an office or offices in India for the purpose of share and stock registration and transfer, and the regulations relating

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<sup>294</sup> 24 & 25 Vict. c.viii (1861) (“the 1861 Act”). The short title to the Act was assigned by section 38.

<sup>295</sup> The 1861 Act, s 1. The newly incorporated company was empowered to enter into contracts with the secretary of state in council, the supreme and “local or native governments of India” and other bodies so as to attain its objectives, and could hold lands in its name. It was prohibited from levying tolls without prior authorisation by Act of the Indian legislature, and none of its purposes was to be carried out within the territories mentioned in the Madras Irrigation and Canal Act 1858 (see above), excepting Orissa. By section 4 the original articles of association were to be superseded by the relevant provisions of the Companies Clauses Consolidation Act 1845 (c.16), both in England and in India.

<sup>296</sup> The 1861 Act, ss 2, 3.

<sup>297</sup> The 1861 Act, s 5. Notices of forfeiture of shares for non-payment were to be placed in the *Government Gazette* and newspapers in Calcutta. A printed copy of the 1861 Act was to be made available at the company’s principal places of business in India and England.

<sup>298</sup> The 1861 Act, ss 6, 7. At the time of enactment £1 million of the £2 million had already been raised by share issue. Sections 8 to 13 provided that further capital raised should be designated and used only for particular works or undertakings (and the shares so described); that separate capital and revenue accounts be maintained (and that the new capital should be kept separate from the previous capital); that shares could be consolidated by the company; and that in general meetings only shareholders with an interest in a particular work or undertaking could vote on matters affecting that project. Sections 7 and 8 were subsequently repealed and replaced by 29 & 30 Vict. c.ccci (1866), ss 3, 4 - see further below in this note.

to such transactions as applied in Great Britain were to apply equally in India<sup>299</sup>

- (f) the company could make a call on each share to the limit of 75% of its value in a given year, invest surplus capital in real estate or government securities, and pay interest of up to 5% p.a. on paid-up shares drawn from surplus profits or (temporarily) capital moneys<sup>300</sup>
- (g) once the company's capital had been fully subscribed (and 50% paid up) the company would be entitled to borrow moneys on mortgage or bond<sup>301</sup>
- (h) a rubric was to be followed for the holding of general meetings of shareholders,<sup>302</sup> and
- (i) directors (a minimum of four, excluding any *ex officio* director) and two auditors were to be appointed, and the London board could appoint up to seven shareholders in India as directors on an India-only board.<sup>303</sup>

16. By 1866 some 48,215 shares had been subscribed for from the first tranche issue of 50,000 shares (designed eventually to raise £1 million of capital). Actual paid-up moneys amounted to around £650,000.<sup>304</sup>

17. In November 1861, following on from the 1861 Act (above), the company had entered into a contract with the secretary of state for India in council to carry out the various works of irrigation and canal construction described in the Act, having secured the assent of the "supreme government" in India. The "supreme government" had undertaken to "co-operate and assist" the company in its project.<sup>305</sup>

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<sup>299</sup> The 1861 Act, s 14. The company could appoint persons in India to issue and transfer shares and stock under official seal; registers of shareholders, stockholders, transfers, mortgages, bonds and debentures were to be maintained at the various offices; shareholders could transfer their holdings from the register at one office to another; and legal jurisdiction relating to a holding was to be determined by the locality of the register, either in India or in Great Britain: sections 15 to 19.

<sup>300</sup> The 1861 Act, ss 20-22.

<sup>301</sup> The 1861 Act, s 23. Borrowing was limited to one-third of the subscribed capital. By section 24 mortgagees could enforce payment of arrears of interest through appointment of a receiver.

<sup>302</sup> The 1861 Act, ss 26-29. General meetings were to be held half-yearly in London, with a quorum of 20 shareholders. Arrangements were made for the appointment of proxies, and for the requiring of a poll. By section 37, notices relating to the proceedings of the company in Great Britain were to be placed in newspapers published daily in London or Middlesex.

<sup>303</sup> The 1861 Act, ss 30-35. To be qualified for appointment as a director in England, a candidate for a new directorship had to hold a minimum of 50 shares. Removal of a director from the board could be effected by special resolution in general meeting.

<sup>304</sup> See preamble to 29 & 30 Vict. c.ccci (1866), discussed below.

<sup>305</sup> Preamble to 29 & 30 Vict. c.ccci (1866). The "supreme government" in this context was the governor general of India in council (the governor general in 1861 was also the viceroy). The agreement dated 28 November 1861 (referred to as the "Orissa contract") was set out in the Schedule to the 1866 Act. The works of irrigation and water supply affected the deltas of the rivers Mahanuddy, Byturnee and Brahminy (and their affluents) and involved the construction of a main irrigation canal through to Calcutta.

18. By 1866 the company had commenced the project works and had spent on it some £550,000 or more. At this stage the company felt that the Orissa contract should be operated as a separate undertaking. This meant that the capital raised so far would be treated as capital relating to the undertaking. The company needed to raise a further £320,000 by borrowing on mortgage, specifically secured on the Orissa undertaking. This would involve cancellation of the initial share issue and reissue in the name of the undertaking. All of this required additional parliamentary authority.

19. The *East India Irrigation and Canal Act 1866*<sup>306</sup> provided (in broad terms) that-
- (a) the provisions in sections 7 and 8 of the 1861 Act (above) be repealed, and there be substituted text which empowered the company to raise the balance of the £2 million capital - together with any additional capital required - specifically for the Orissa project; and that, for the future, the company could keep capital raised separate and distinct for designated projects<sup>307</sup>
  - (b) the company be empowered through general meeting to forfeit shares where calls for payment had been made but not honoured by shareholders, and to issue new ordinary shares in lieu of those forfeited<sup>308</sup>
  - (c) new ordinary shares and stock could be issued and cancelled as required<sup>309</sup>
  - (d) the company could raise moneys either by borrowing on mortgage or by the issue of debenture stock (to the sum of £320,000 in total),<sup>310</sup> and
  - (e) the directors could invest moneys not immediately required either in the manner authorised by the 1861 Act or by purchasing government

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<sup>306</sup> 29 & 30 Vict. c.ccc (1866) ("the 1866 Act"). The short title to the Act was given by section 1 and, by section 2, the 1861 and the 1866 Acts were to be construed as a single Act.

<sup>307</sup> The 1866 Act, ss 3, 4. Under this arrangement persons or bodies subscribing to shares would participate only in the profits arising on the particular undertaking in which they had invested. By section 22 the capital required for the Orissa project (initially £964,300), together with future capital raised for that project, was to be kept separate and called "the Orissa capital".

<sup>308</sup> The 1866 Act, ss 5, 12. Sections 6 to 11 provided for the continuing liability of shareholders for payment arrears (less the value of the shares at the time of forfeiture), and for the voluntary surrender or cancellation of shares with payment outstanding.

<sup>309</sup> The 1866 Act, ss 13, 14. Sections 15 to 21 set out a general rubric for the apportioning of shares, the making of offers (in England - which would have included Wales - Scotland, Ireland and India), the acceptance and vesting arrangements for shares, and the voting rights attaching to shares. By section 36 the limit in the 1861 Act on the number of shareholder proxies (up to 20) was repealed.

<sup>310</sup> The 1866 Act, ss 23, 24. Preferential interest on the debenture stock could be paid to a maximum of 6% p.a. Borrowing powers were limited to the amount of moneys not raised by the issue of debenture stock: section 34. Sections 25 to 33 provided that debenture stock, and its interest, was to be a prior charge on the particular undertaking within the company for which it was raised; that the stock was to be registered separately (and accounted for separately) and certificates issued; and that debenture holders, who were to be treated as mortgagees, were not to have voting rights.

securities or shares in companies with government-guaranteed interest.<sup>311</sup>

20. Between 1866 and 1868 the company entered into a further agreement with the secretary of state in council whereby it agreed to undertake another scheme of works, similar to those in the Orissa project, this time within the province of Behar (now Bihar). The Behar project (known as “the Behar undertaking”) would focus on the river Soane (today the Son), and would embrace territory to Chunar on one side and Patna on the other. However, at the time of the agreement, no capital had been created for this second project.<sup>312</sup> The Orissa project had started to run into financial difficulties.

21. By 1868 both parties (the secretary of state and the company) thought it expedient that responsibility for both projects - Orissa and Behar - should be transferred to government. To this end, three agreements were made which purported to effect the transfer of the company’s undertaking, and all rights and interests of the company in them.<sup>313</sup> However, as the preamble to the Act of 1869 (below) put it, “doubts have been raised” as to whether the company was empowered to enter into such agreements. Those doubts could only be resolved by fresh legislation.

22. The *East India Irrigation and Canal Act 1869*<sup>314</sup> was a relatively short statute. It provided that -

- (a) the three instruments described in the Act were confirmed as valid and deemed binding on the parties<sup>315</sup>
- (b) a receipt sealed by the company in respect of moneys paid by the secretary of state in council, pursuant to the various agreements, would indemnify the secretary of state from any further liability for such moneys<sup>316</sup>

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<sup>311</sup> The 1866 Act, s 35. Government securities included those of the secretary of state in council and of the supreme and local governments in India.

<sup>312</sup> See preamble to 32 & 33 Vict. c.7 (1869), discussed below.

<sup>313</sup> The agreements were, first, one dated 30 November 1868 (articles of agreement) and, secondly, two dated 21 December 1868 (an indenture and further articles of agreement, the latter endorsed on the earlier articles): see preamble to 32 & 33 Vict. c.7 (1869) and the Schedule which identified the instruments.

<sup>314</sup> 32 & 33 Vict. c.7 (1869) (“the 1869 Act”). The short title to the Act was given by section 1.

<sup>315</sup> The 1869 Act, s 2 and Sch.

<sup>316</sup> The 1869 Act, s 3.

- (c) the company's directors were to hold all moneys received in respect of the Orissa project (together with any interest) on trust for apportionment and distribution to the shareholders and stockholders who owned the Orissa capital,<sup>317</sup> and
- (d) once moneys had been distributed to individual share or stock holders they would no longer be members of the company, and once all the moneys received by the directors had been distributed in accordance with the various agreements, and "the affairs of the Orissa undertaking [had] been wound up", the project would cease to be part of the company's overall undertaking.<sup>318</sup>

#### *Status of the Acts*

23. Both the Madras Irrigation and Canal Company and the East India Irrigation and Canal Company were able to undertake irrigation and canal works pursuant to the statutes which authorised the raising of capital and the execution of their projects. The Madras irrigation company operated from 1857 to 1882, when its operations were bought out by the British government. The East India irrigation company operated from 1860 to 1869, when its Orissa project was transferred to government. Its Behar project had not, at this juncture, moved beyond the design stage.

24. The various Acts relating to the two companies (1858 through to 1872) had been enacted to facilitate their specific projects. On that basis all seven Acts are now spent.

#### *Extent*

25. The four Madras Acts were designed to extend to England and Wales, Scotland and Ireland, and to India.

26. The three East India Acts were designed to extend to the same territories.

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<sup>317</sup> The 1869 Act, s 4. By section 5 the holders of shares and stocks in the Orissa capital were those whose names appeared in the company's books (subject to special arrangements for shares previously declared forfeit but not subsequently sold). Receipts for moneys given by executors or administrators of deceased share or stock holders were deemed an "effectual discharge": section 6.

<sup>318</sup> The 1869 Act, s 7. On the winding-up of the Orissa undertaking the Orissa capital was to cease to exist and, as from the date of the Act's passing (royal assent given 19 April 1869), any unsubscribed nominal Orissa capital was deemed extinguished. The statutory winding-up applied only to the Orissa project, however, and not to the company itself.



*Consultation*

27. HM Treasury, the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, Companies House, the High Commissions for India and Bangladesh, the Ministry of Law and Justice (Government of India), and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about the repeal proposal set out in this note.

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