

LAW COMMISSION



STATUTE LAW REVISION East India Company Repeal Proposals



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BACKGROUND NOTES ON STATUTE LAW REVISION

What is it?

1. Statute law revision is the process of 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. The work of statute law revision 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’ statute law revision proposals is by means of special Statute Law (Repeals) Bills. 17 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 (i.e. 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 Counsel General to the National Assembly for Wales 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 (e.g. 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 (i.e. sections, schedules, orders, etc.) that have been repealed;
 - (e) repealing provisions e.g. "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 - e.g. 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 statute law revision 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 2004 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. The policy of maximising cheap food production after the Second World War had been overtaken by new farming methods and the influence of the Common Agricultural Policy. Victorian powers for the Metropolitan Police to license shoeblacks and commissionaires had become as irrelevant as the offence of fraudulently impersonating a shoeblack or commissionaire. And an 1840s Act to sanction lotteries to help struggling artists sell their work had become superseded by the modern law on lotteries.

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 (e.g. 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.

EAST INDIA COMPANY REPEAL PROPOSALS

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EAST INDIA COMPANY REPEAL PROPOSALS

East India Company Acts (various) from 1796 to 1832

General background to the legislation

1. The East India Company was established by Royal Charter in 1600 and operated until its dissolution in 1874.¹ Its initial purpose was to provide a vehicle for the creation of exclusive trading privileges in the East Indies (India, including Pakistan and Bangladesh, and Malaysia, China and Japan) for London merchants. In practice, it also became an “agent of imperialism”² prior to the passing of direct rule of India to the British government in 1858.

2. The East India Company began as “The Governor and Company of Merchants of London Trading into the East Indies”.³ It operated under a trade monopoly throughout the 17th century. At first, the company’s prospects were dependent upon the success of individual voyages, but by 1657 the company had achieved continuous investment through a joint stock arrangement. The Royal Charter provided the key to the company’s success: although it was not a state enterprise (unlike its main European competitors, the Dutch company and the French company), the Charter underpinned the company’s reputation and standing. Except where its actions impinged on national interests, it was allowed to operate independently and unchecked.

3. In 1694, the Government (bowing to the forces of opposition) withdrew the East India Company’s trade monopoly. The English Parliament provided that all English subjects had the right to trade with the Indies. In 1695, a Scottish East India Company was formed, but soon failed because of lack of backing from the English Parliament. A second English East India Company was established in 1698, and the two English organisations then operated concurrently. Through a constitutional flaw, the second company (which was share-based) lost majority control to the first. By 1702, it had become clear that the original company was the stronger, and that the

¹ See generally, for the history of the British East India Company, P Lawson, *The East India Company: A History* (1993); G Davies, *The Early Stuarts 1603-1660*, (2nd ed 1959) p 322; G Clark, *The Later Stuarts 1663-1714*, (2nd ed 1959) p 348; B Williams, *The Whig Supremacy 1714-1760*, (2nd ed 1959) p 324 and L Woodward, *The Age of Reform 1815-1870*, (2nd ed 1959) p 403. The Royal Charter was granted by Elizabeth I on 31 December 1599, and became effective the following day.

² P Lawson, *The East India Company: A History* (1993) p viii.

two companies could not co-exist. In 1708, after six years of negotiation facilitated by Sidney Godolphin (1st Earl of Godolphin), the two companies formally merged, to become the “United Company of Merchants of England Trading to the East Indies”.⁴

4. The amalgamated company not only consolidated its lucrative trade monopoly in the Indies through the 18th century, it also extended its reach from trading to the exercise of political and territorial power. Anglo-French hostilities in Europe spilt over into the Indies, and there were numerous clashes between French⁵ and the English⁶ factions. Moreover, both the French and English companies became embroiled in the domestic rivalry of the Mughal rulers in India, with each company supporting a different camp. The English company recognised the only way to preserve English interests in India was to defend them aggressively. Sir Robert Clive returned⁷ to India in 1756, at the start of the Seven Years War,⁸ and set about his appointed task. After a key battle at Plassey in 1757, he secured the presidency of Madras, and then sent a relief force to Bengal where he captured Calcutta.⁹ With Madras and Bengal under Clive’s command, and both nawabs (local rulers) subject to his control, the East India Company secured sovereignty in the region.

5. The company ruled a large part of India throughout the 18th century under its own mandate. The East India Company Act 1786¹⁰ marked the formal transfer of political and ruling power in India from the company to the British Crown, with the company acting as the state’s subsidiary. Thereafter, the fortunes of the company deteriorated. Its general indebtedness grew and trading became increasingly reliant on military support from the company-controlled Indian army. In 1813, Parliament withdrew the company’s trading monopoly.¹¹ Having lost its ability to make a profit,

³ The Royal Charter, 1600, as cited in P Lawson, *The East India Company: A History* (1993) p17.

⁴ W Holdsworth, *A History of English Law*, volume XI (1966) p148.

⁵ Led primarily by Joseph François Dupleix.

⁶ Led primarily by Sir Robert Clive, later 1st Baron Clive of Plassey. (b.1725-d.1774.) Clive became an East India Company servant in 1743. After a short period in the administrative service, he transferred to the company’s military arm and headed numerous campaigns in the Indies. Clive returned to England after retiring from active service in 1767.

⁷ For a discussion of Clive’s previous sojourn in India, please see paragraph 3 on page 13.

⁸ 1756-1763. The Treaty of Paris 1763, signed by Britain, France and Spain, formally marked the end of the hostilities.

⁹ Clive’s action was in response to the “Black Hole of Calcutta” incident, where 123 Britons died in a single night after being imprisoned by the nawab.

¹⁰ East India Company Act 1786 (26 Geo.3 c.16), repealed in 1793. Parliament had previously attempted to clarify the boundaries between the company and the British state with the East India Company Act 1784 (24 Geo.3 Sess.2 c.25), which provided for a Board of Commissioners, appointed by the Crown, to control the company. Because the 1784 Act was capable of different interpretations, the 1786 Act’s purpose was to remove uncertainty.

¹¹ East India trade Act 1813 (54 Geo.3 c.34). The company retained its monopoly to trade in tea with Canton (China), but in all other respects the monopoly was abolished.

the East India Company's role became simply the provision of administrative services to the British Crown.

6. In 1857, as a consequence of British political reforms, principally affecting Bengal and the north-east of the country, the Indian army mounted attacks (the Great Rebellion) in that region against their British officers. The other British presidencies were less affected. This sealed the fate of the company: because it could no longer control the military, it could no longer act as an arm of the British Crown. The Government of India Act 1858¹² provided that the governance of India should pass absolutely to the British Crown (for whom it had been held in trust). The company was unable to divorce itself from its past dealings with India, and its fortunes failed to improve. It ceased trading, and was dissolved by Act of Parliament in 1874.¹³

¹² 21 & 22 Vict. c.106 (1858).

¹³ East India Stock Dividend Redemption Act 1873 (36 & 37 Vict. c.17).

<i>Reference</i>	<i>Extent of repeal or revocation</i>
36 Geo.3 c.119 (1796) (East India Merchants and purchase of land in City of London)	The whole Act.
36 Geo.3 c.127 (1796) (East India Merchants and land for warehouses)	The whole Act.

Background to the legislation

1. The East India Company headquarters were based at East India House, in Leadenhall Street in the City of London, for the entirety of the company's existence. The former mansion house was in use from 1648 to 1726, when it was then rebuilt. The new building was replaced in 1799-1800 by a much larger structure (designed by the architect Richard Jupp) which survived until 1929.¹⁴ Lloyd's of London took over East India House after 1874.

36 Geo.3 c.119 (1796)

Purpose

2. By 1796, two issues had arisen. First, the company's headquarter offices required expanding and, secondly, the proximity of the dwelling-houses on the eastern side of the property posed a fire hazard which needed to be addressed by creating a wider safety cordon. The solution was, initially, for the company to promote what became an Act of 1796, in order to obtain the necessary powers.¹⁵

3. The broad purposes behind the 1796 Act were as follows:

- (a) to facilitate the acquisition by the company of various premises for the project,¹⁶ the owners of three specific parcels of land (who lacked full

¹⁴ See www.portcities.org.uk/london/server/show/conMediaFile.6114/The-Old-East-india-House.

¹⁵ 36 Geo.3 c.119 (1796) ("the 1796 Act"), being "An Act to enable the United Company of Merchants of England trading to the East Indies, to purchase certain Houses and Ground contiguous to the East India House, and to widen the North End of Lime Street". The Act recited in its preamble that the United Company owned the freeholds of a "certain edifice" known as the East India House and of "divers offices and warehouses thereunto adjoining" (including a property called simply The India House), which property-holding stretched from Leadenhall Street through to the west side of Lime Street, at its rear. The various offices were used for the safe-keeping of company papers and records, which were "of great consequence to the publick as well as to the said United Company", and of "other valuable property": *ibid.*, preamble.

¹⁶ In summary the project involved extending the offices at India House, and widening the north end of Lime Street, both of which necessitated the acquisition of land and buildings from Leadenhall Street

legal capacity to transfer title) were authorised “to sell and convey” the various legal interests to the company, notwithstanding the legal impediments;¹⁷

- (b) to authorise the sale of one parcel of land in Lime Street by the parson and churchwardens of the parish of St. Andrew Undershaft, by deeming them to be holders of the legal estate (even though they were simply recipients of the rents and profits of the land which was held by others on trust for charitable purposes);¹⁸
- (c) in the event that any one or more of the owners of the three sites should refuse to sell, or should be unable to adduce “a clear title”, to provide for the assessing, by a special jury, of the values of the parcels of land in question for compensation purposes and determination by court order.¹⁹ If no person could be identified as an appropriate recipient of the compensation moneys, then, on payment of the moneys into the Bank of England in the prescribed manner, “good, clear, and perfect title” could be conveyed to the company, or the company could take possession of the land as the lawful owners;²⁰

eastwards, to Lime Street, and in Lime Street itself, from its north-west corner up to the shipping office already in the company’s ownership. Much of the required land had been acquired by the company by agreement, but three parcels remained outstanding. Even though the purchase prices had been agreed with the respective vendors, unencumbered title could not be conveyed until certain charitable trusts attaching to the properties had been circumvented. This required parliamentary authorisation: the 1796 Act, preamble. Conduct of the project could be overseen by a committee of the court of directors of the company, operating under delegated powers: *ibid.*, s 17.

¹⁷ The 1796 Act, s 1. The form of conveyance was to be by indenture, reciting the consideration paid, and “enrolled in the court of hustings of the said City of London” within six months of execution. The effect of enrolment was that the estates stated to be conveyed to the company would be properly vested in it, and the indenture would “have the same force as fines and recoveries duly levied and suffered”: *ibid.*, s 1. Similarly, all “bargains and sales” (in respect of land purchased by the company for the 1796 Act’s purposes), once enrolled in the court of hustings, would “absolutely vest the premises therein mentioned” in the company and would likewise have the force accorded to “any fine or fines, recovery or recoveries whatsoever” when levied: *ibid.*, s 11.

¹⁸ The 1796 Act, s 2. The Act recited that from 1672 onwards the land was held by “sundry persons, inhabitants of the said parish” as trustees (under the will of Thomas Rich, deceased) but, on their various deaths, the parson, churchwardens and vestrymen for the time being of the parish had failed to appoint replacement trustees. As a consequence, and with the passage of time, it had become impossible to ascertain the individuals in whom the estate should have vested (and who could now lawfully convey the land). An ownership deeming provision was the solution.

¹⁹ The 1796 Act, s 3. The jury was to be empanelled by the Lord Mayor’s Court (acting through the City sheriffs), on the application of the court of directors of the company. Once value was determined by the court, notice of the decision was then to be served on the interested parties. The Act laid down, in sections 3 to 5, the mechanics for summoning the jury, of returning a verdict, of remunerating jurors, of assessing and awarding costs between the parties, and of maintaining the court’s records of its findings. By section 14, the Lord Mayor’s Court was empowered to impose a fine up to £10 on any sheriff, deputy, bailiff, agent, juror or witness who defaulted on, or wilfully neglected to perform, their duty under the Act, and to levy distress to enforce such fine.

²⁰ The 1796 Act, s 6. Any conveyance (or deemed conveyance) was to contain “all such reasonable and usual covenants as on the part of the said United Company, their successors and assigns, shall be

- (d) to require the payment and the application of the land purchase moneys in such a way that alternative lands could be acquired for the vendor owners, to be held on the same trusts as applied to the original lands (under the supervision of the High Court of Chancery);²¹
- (e) to authorise the making of claims by individuals for recovery of the monetary value (with interest) of lands purchased by the company, subject to a limitation period of five years;²²
- (f) to require the company, “with all convenient speed after the passing of this [1796] Act”, to complete the authorised land purchases, to demolish the various buildings on site (fronting Lime Street), and then to widen and pave both the carriageway and the abutting west-side footway;²³

reasonably required”, and was to be executed at the expense of the company: *ibid.* Where persons were in actual occupation of premises being purchased, and their terms of occupation had not yet expired “by effluxion of time or otherwise”, they were to be served with notice and were only to be dispossessed when the term had expired or six months had elapsed. If vacant possession was not offered, the court was empowered to issue a precept to take possession: *ibid.*, s 7.

²¹ The 1796 Act, ss 8-10. Specific statutory provision had to be made in respect of two of the land acquisitions. In the case of settled land owned by Mr and Mrs J Ravenshaw (located in Leadenhall Street), but held in trust for their family and funding an annual charitable payment, the purchase money was to be paid into the Bank of England (in the name of the accountant-general of the Chancery Court, to earn interest through government use, pursuant to the mechanics prescribed by 12 Geo.1 c.32 (1725) and 12 Geo.2 c.24 (1738)) pending the purchase of a replacement property sanctioned by the court: *ibid.*, s 9. In the case of land belonging to the parish of St. Andrew Undershaft, located at Lime Street (see above) held for charitable purposes, and land belonging to the Governors of Christ’s Hospital in London, also located in Lime Street and held for charitable purposes, the capital purchase moneys would likewise be paid into the Bank for investment (to the order of the Chancery court), pending use for the acquisition, in each instance, of replacement real estate. Meanwhile, the interest accruing could either be paid to the charitable bodies, or retained and accumulated to supplement the eventual purchase moneys: *ibid.*, s 10.

²² The 1796 Act, s 12. The claimant was able to enter a “memorial” of their claim in a register to be maintained by the town clerk of the City of London (on the lines of a register maintained for the county of Middlesex), which claim had then to be established by the claimant. A claim could only be made within five years from the date of enrolment of the sale or bargain in the hustings (or within five years of removal of any legal disability on the claimant’s part), after which it would become statute-barred. On expiry of the limitation period, the company would be “quieted in the possession” of the acquired property. In the event of a successful claim against it, the company had the right to seek indemnity from the original vendor: *ibid.*, s 12. Where a claimant succeeded in their action, they were not precluded from bringing separate proceedings to recover mesne profits from any person who had, prior to the purported sale, been in possession of the property: *ibid.*, s 13.

²³ The 1796 Act, s 15. Lime Street was to be widened from its north end up to the company’s existing shipping office building, to a minimum overall width of 22 feet (including a footway at least 4 feet wide), and paved (or re-paved) in Purbeck stone (so as to match the paving with which “the other streets of London are most usually paved”): *ibid.* This construction obligation did not, however, extend to the future repair and maintenance of the paved street (“the pavement”), which would “for ever then after be kept in repair by such person or persons, companies or societies, which now are or hereafter shall be chargeable with the repairs of the publick streets in the said parish of Saint Andrew Undershaft”: *ibid.*, s 16. The duty to pave, repair and maintain streets and highways in the City was vested in the Mayor and Commonalty of the City of London, on behalf of the City’s inhabitants, by the Paving, etc, of London Act 1768 (8 Geo.3 c.21). This Act was amended by the City of London Sewerage Act 1771 (11 Geo.3 c.29) and the London (Streets and Sewers) Act 1793 (33 Geo.3 c.75). The duty passed to the vestries under the Metropolis Management Act 1855, but reverted to the City Corporation under the London Government Act 1899 (now repealed). The City Corporation remains the local highways authority for all non-strategic roads within its boundary.

- (g) to permit the company to exceed the maximum annual value statutorily prescribed for its land and property portfolio in Great Britain;²⁴ and
- (h) to lay down a limitation period for legal challenge of “any thing done in pursuance of this [1796] Act”.²⁵

Status of the 1796 Act

4. The sole purpose of the 1796 Act was to enable the East India Company to extend its headquarters building in London, subject to it also widening and paving a public highway adjoining one of the boundaries.

5. The 1796 Act stood alone, and was not dependent upon other legislation relating to the company’s functions. Apart from references to existing national legislation relating to the summoning of juries (in section 3) and to the payment of compensation moneys into court (in section 9), the Act did not on its face refer to other legislation.

6. The enlarged Leadenhall Street building was erected in 1799-1800. It appears to have survived until 1929, when it was demolished. Today, the site is occupied by the Lloyd’s Building (designed by Richard Rogers, and built in 1986).

7. The East India Company was dissolved in 1874.

8. The 1796 Act is now spent, and may be repealed in whole.

36 Geo.3 c.127 (1796)

Purpose

9. At the same time, the company needed to reconfigure its warehousing operation in order to make it more secure. To this end it sought, and obtained, further legislative powers which would enable it to stop up a public highway that divided its warehouse complex, and would enable it to acquire land for this purpose and for building further warehousing.²⁶

²⁴ The 1796 Act, s 18. The Act recognised that the threshold would of necessity be exceeded by the acquisition of the additional lands and by carrying out the building construction and refurbishment programme.

²⁵ The 1796 Act, s 19. Actions had to be commenced in the City of London within six months of accrual of the cause, failing which they would be time-barred and costs penalties could be imposed.

²⁶ The powers were contained in 36 Geo.3 c.127 (1796) (“the warehousing Act”), being “An Act for enabling the United Company of Merchants of England trading to the East Indies to purchase Ground

10. In broad terms the second 1796 Act (“the warehousing Act”) provided the following powers:

- (a) to enable the company’s court of directors to enlarge its landholding within the City of London²⁷ by acquiring “a small estate” (5 Inkhorn Court) then in private ownership;²⁸
- (b) to build additional warehouse accommodation and to ensure that its warehousing complex was “united and made private” by acquiring further land and diverting an existing public street;²⁹
- (c) to empower all corporate bodies and persons with legal incapacity “to sell and convey” to the company, by indenture, their interests in the relevant parcels of land;³⁰
- (d) to provide a mechanism “to settle and ascertain” the value of parcels of land where an owner either refuses to sell voluntarily or is unable to sell “by reason of absence or disability”, or where no-one can be found with power to negotiate a sale or agree upon a price, or where the vendor is unable to make good title;³¹

for building Warehouses upon, and to make a new Street from Petticoat Lane to White Street, instead of Gravel Lane in Petticoat Lane”.

²⁷ The company’s existing landholding (and warehousing) lay between New Street (near Bishopsgate Street) to the north, Petticoat Lane to the east, Harrow Alley to the south, and various houses and grounds in White Street and Cutler Street to the west, all in the parish of St. Botolph Aldgate. This site was “intersected almost through the centre” by Gravel Lane, running from Petticoat lane to Harrow Alley, which “publick lane, passage, or highway” was “exceeding inconvenient for carriages” because of its width and its winding configuration: preamble to the warehousing Act.

²⁸ The warehousing Act, preamble and s 1. The land was owned by one Joseph Sibley and his wife.

²⁹ The warehousing Act, preamble and s 1. The company would, at its own expense, provide a tranche of land for the new street (running from Petticoat Lane to White Street, near Houndsditch) and acquire (for the western end) buildings and land owned by “the Master, Wardens, and Commonalty of the Mystery of Cutlers within the Liberty of the City of London, and by them leased to divers tenants”, together with “a certain vacant piece of ground” leased to the Revd. Josiah Thompson (which latter parcel was for the company’s own use): *ibid.* Specific parliamentary authority was required because (a) the lands in question were subject to trusts which would need to be overridden, or were vested in persons with insufficient legal capacity to sell and convey, and (b) closure and diversion of Gravel Lane involved interference with a public highway. The warehousing Act provided the authority and gave “sufficient” indemnity to the company and its officers, agents and contractors in respect of any claims made subsequently by the various vendors: *ibid.*, s 1. The court of directors of the company was authorised to delegate to one of its committees power “to manage and transact” the project on its behalf: *ibid.*, s 18.

³⁰ The warehousing Act, s 2. The sales were only perfected once the relevant indenture had been enrolled in the court of hustings for the City of London within a time limit of six months and, once enrolled, the premises would vest in the company absolutely and with full legal effect: *ibid.*, ss 2, 11.

³¹ The warehousing Act, s 3. In these circumstances, at the instigation of the company’s court of directors, the Lord Mayor’s Court was required to issue warrants to the city’s sheriffs to summon a jury who were to hear evidence on value and “assess and award” appropriate compensation (for which the court would then enter judgment). The court’s decision would be binding against all-comers, including

- (e) to provide a mechanism for making payment for the land and transfer of title where the landowner is under a legal incapacity, refuses to execute the conveyance, or cannot make “clear title”;³²
- (f) to authorise the making of claims by individuals for recovery of the monetary value (with interest) of lands purchased by the company, subject to a limitation period of five years;³³
- (g) to require the company, “with all convenient speed” post-enactment, to complete the various land purchases and to construct the new highway (from Petticoat Lane, westwards along Harrow Alley, and then south down White Street) as a paved street with a minimum width of 16 feet;³⁴
- (h) to permit the company to exceed the maximum annual value statutorily prescribed for its land and property holding in Great Britain;³⁵ and

“the King’s most Excellent Majesty, his heirs and successors”, and had to be entered on the court record which was to be available for public inspection: *ibid.*, ss 3, 5. Provision was made for jurors and witnesses to be reimbursed their expenses and compensated for their time, the cost of which would fall solely on the company (although not in certain circumstances): *ibid.*, s 4. The court was given power to fine any defaulting sheriff, bailiff, agent, juror or witness, or any other person who should “wilfully neglect” to perform their duty under the Act: *ibid.*, s 14.

³² The warehousing Act, s 6. In these circumstances payment could be made into the Bank of England (under the direction of the High Court of Chancery), notice given as appropriate, and the company was then at liberty to take possession of the land and to hold it as “if the said premises were conveyed to them by all the persons entitled thereto, or interested therein, and such persons were competent to make such conveyances”: *ibid.* Where the acquired lands were previously held on trust or for charitable purposes, alternative lands were to be purchased and held under the same arrangements, subject to direction by the Chancery Court. Pending such purchase, in the case of charitable trusts, the sale proceeds were to be held in the Bank of England and invested in Government stock for the charity’s benefit, subject again to the Court’s direction: *ibid.*, ss 8, 9. Occupiers of land were not to be dispossessed without six month’s prior notice, unless their terms “shall sooner determine by effluxion of time or otherwise”: *ibid.*, s 7. In default of yielding possession at the due date, enforcement was to be effected by the city’s sheriffs acting on the court’s warrant. Specific statutory protection was also afforded to mortgagees of acquired land, who were, in essence, to be paid off with interest or (with their consent) re-secured: *ibid.*, s 10.

³³ The warehousing Act, s 12. This provision closely mirrors that in section 12 of the 1796 Act: see above. A “memorial” of the claim had to be entered in a register held by the town clerk of the City of London. If the claimant was successful, the company had a right of action against their vendor. Once the limitation period had expired, the company was entitled to retain quiet possession of the acquired parcel of land. As under the 1796 Act, a claimant was not precluded from bringing separate proceedings against a previous occupier for mesne profits: *ibid.*, s 13.

³⁴ The warehousing Act, s 15. The highway was to include within it a footway, at least 2 feet 6 inches wide, adjoining the carriageway. As with Lime Street (see above, under the 1796 Act), once the reconstruction works were complete, the obligation for future repair and maintenance was to pass to the body or authority “chargeable with the repairs of the publick streets in the said parish of Saint Botolph Aldgate”: *ibid.*, s 16. Once the new highway had been constructed and dedicated the company was authorised to stop-up the former Gravel Lane, which would then vest in the company “as their own private property”: *ibid.*, s 17.

³⁵ The warehousing Act, s 19. This provision mirrors and repeats, almost identically, the lifting of the restriction by the 1796 Act, s 18, above.

- (i) to lay down a limitation period for legal challenge in respect of “any thing done in pursuance of this [warehousing] Act”.³⁶

Status of the warehousing Act of 1796

11. The warehousing Act’s sole purpose was to enable the East India Company to extend and make secure its warehousing complex within the City and, in so doing, to divert an inconvenient highway. The warehousing complex was situated some streets away from the site of the company headquarters.

12. The warehousing Act stood alone. Its existence did not depend on earlier legislation relating to the company’s functions, or on the previous Act of 1796. As with the 1796 Act, its reference to national legislation was restricted to the powers for summoning juries (in section 3) and to the mechanism available for making payments into court (in section 9).³⁷

13. Gravel Lane still exists, situated between Middlesex Street and Houndsditch, in the City of London. The northern part of this lane was demolished in 1799 to facilitate the construction of the Cutler Street (or Cutlers Gardens) warehouses for the East India Company to store imported goods, principally tea. The warehouse complex eventually covered over 5 acres. On the demise of the East India Company the buildings were taken over by the St. Katharine’s Dock Company and, later, by the Port of London Authority. During the 1970s the warehouses were converted into office accommodation.³⁸

14. Cutler Street (of today) was formed in 1906 from Cutlers Street and White Street (running south to Harrow Alley and Gravel Lane), both of which were in existence in 1746.³⁹

³⁶ The warehousing Act, s 20. As with the 1796 Act (above), any actions had to be commenced in the City of London within six months. If this were not complied with, actions would be barred and costs penalties would be imposed.

³⁷ In the printed version of the warehousing Act, section 9 is wrongly shown as section 11, through the transposition of Roman numerals.

³⁸ See: *Middlesex Street: Conservation Area Character Summary* (Corporation of London Department of Planning and Transportation, 2003), and <http://www.portcities.org.uk/london/server/show/conMediaFile.4276/The-Cutler-Street-warehouses>.

³⁹ See H Harben *A Dictionary of London* (1918) at <http://www.british-history.ac.uk/report.asp?compid=10283>.

15. The East India Company was dissolved in 1874, and all ancillary powers vested in it to develop and acquire land would have evaporated at that time.

16. The warehousing Act of 1796 is now spent, and may be repealed in whole.

Extent

17. The greater part of each of the Acts of 1796 applies locally only within the City of London, in England (although section 18 of the earlier Act, and section 19 of the later Act, are expressed to apply also to Great Britain).

Consultation

18. The Foreign and Commonwealth Office, the Department for International Development, the Department of Trade and Industry, the City of London Corporation, Lloyd's of London and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

32-195-453
LAW/005/016/06
12 July 2006

<i>Reference</i>	<i>Extent of repeal or revocation</i>
46 Geo.3 c.cxxxiii (1806) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
50 Geo.3 c.ccciii (1810) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
52 Geo.3 c.clxxxviii (1812) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
57 Geo.3 c.viii (1817) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
59 Geo.3 c.xxvi (1819) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
3 Geo.4 c.xviii (1822) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.
7 Geo.4 c.xli (1826) (East India Company and the creditors of the Nabobs of the Carnatic)	The whole Act.

Background to the legislation

1. There were two types of territorial division in India between 1600 and 1947:⁴⁰ the presidencies and the princely states. From the early 17th century, the English established presidencies in areas of India, the main three being Bombay, Madras and Calcutta. Originally, these were British trade enclaves dependent upon the Mughal emperor's edict allowing foreign trade in India. As the East India Company grew stronger, these presidencies grew in power. They formed British India when direct rule was transferred to the Crown in 1858.

2. The presidencies were the main administrative areas, ruled by presidents at first, followed by governors and councils. They were made up of various princely

⁴⁰ India achieved independence from British rule in 1947.

states. Muslim princely states were ruled by nawabs, or nabobs,⁴¹ whilst Hindu princely states were ruled by rajahs. The Madras presidency, also called the Carnatic region, was situated on the east coast of South India, and included the princely states of North and South Arcot and Tanjore. The rulers of these princely states nominally retained autonomy over their land, but amassing British debts and seeking British military protection inevitably turned them into vessels through which the British governed.

3. The nawabs of Arcot (or nabobs of the Carnatic) had sought the support of the British in the mid 18th century when the French had replaced Mohamed Ali Khan Walajan, then nawab, with their own candidate, Chanda Sahib. Sir Robert Clive arrived in the Carnatic in 1751 to provide assistance to the displaced nawab. By 1752, Clive had reinstated Mohamed Ali, reciprocally securing a new commercial market in the Carnatic.⁴²

4. The nawab (or nabob) Mohamed Ali, became heavily indebted to the East India Company. The company had supported the nawab in the First Mysore War⁴³ and in violent clashes with Tanjore.⁴⁴ In order to repay his debts to the company, the nawab was forced to expropriate the state revenues and the revenues of vassal states under his power, for example, Tanjore. In February 1785 Edmund Burke,⁴⁵ in a searing speech delivered to Parliament on the Nabob of Arcot's debts, spoke of the nawab's "dreadful resolution" to pour a "hurricane of war" on the central provinces of the Carnatic (and upon a people who already were suffering the terrible effects of famine), and of the Government's complicity in that "tyranny sublimed into madness".⁴⁶ His principal thrust was against "the ministers at [the Speaker's] right hand" who were seeking to facilitate loans based (he said) on their unrealistic "estimate of the revenues of the Carnatic", so as to provide "not supply for the establishments of its protection, but rewards for the authors of its ruin". The picture was one of "oppression...extortion and usury".⁴⁷ By offering to lend further moneys to

⁴¹ An English corruption of the term "nawab", which refers both to Indian rulers and to the company servants who acquired huge wealth in the Indies and returned to England to flaunt it.

⁴² See B Williams, *The Whig Supremacy 1714-1760* (2nd ed 1962) p327.

⁴³ 1767-1769.

⁴⁴ 1771 and 1773.

⁴⁵ b.1729-d.1797. An influential Whig MP and political philosopher, Burke championed liberal and reform causes, highlighting the responsibilities of Britain in the Empire, and bringing to light previously unpublicised injustices across the Empire.

⁴⁶ Parliamentary History (1785) vol 25, cols 182-259. Burke records that the nawab's principal opponent (Hyder Ali, of Mysore) fought back against the nawab once he had "terminated his disputes with every enemy and every rival, who buried their mutual animosities in their common detestation against the creditors of the nabob of Arcot": *ibid.*

⁴⁷ *Ibid.*

the nawab, Burke felt that the company and the Government were condoning and encouraging the Nabob of Arcot's exploitation of the country around him.

46 Geo.3 c.cxxxiii (1806)

Purpose

5. In July 1805 the East India Company (which had by then taken over the collection and "administration of the revenues of the Carnatic Payen Ghaut") entered into "articles of agreement" ("the 1805 agreement") with various private creditors of the Nabobs of Arcot so as "to form a fund for the payment of all the just debts to private creditors remaining unsatisfied".⁴⁸ The 1805 agreement provided that the company would set aside annually a significant sum of money for the fund,⁴⁹ from which the various creditors would be paid "in full satisfaction and discharge of all [their] claims and demands", once such claims had been independently verified.⁵⁰

6. The verification and apportionment process was to be overseen by three "commissioners and referees" who would operate in England, supplemented by the efforts of three similar appointed officers who would sit at Madras in India.⁵¹ The commissioners' task was to investigate "the origin, justice, and amount of the several debts claimed to be due" and "the rights of such claimants to such debts", with a view to establishing entitlement and apportionment.⁵² Administration of the claims process would be handled by two "registers of the debts of the Nabobs of Arcot" (*ie.* registrars), who were to be appointed by the creditors.⁵³

⁴⁸ Preamble to 46 Geo.3 c.cxxxiii (1806) ("the 1806 Act"), being "An Act for enabling the Commissioners acting in Execution of an Agreement made between the East India Company and the Private Creditors of the Nabobs of the Carnatic, the better to carry the same into Effect". The debts concerned were those incurred by several members of the ruling family, all deceased by 1805: His late Highness the Nabob Wallah Jah (Nabob of Arcot and of "the Carnatic in the East Indies"), His late Highness the Nabob Omdut ul Omrah (the eldest son of Wallah Jah), and His late Highness the Ameer ul Omrah (the second son).

⁴⁹ "the sum of Star Pagodas three lac forty thousand" (340,000 Star Pagodas) each year: the 1806 Act, preamble.

⁵⁰ The 1806 Act, preamble.

⁵¹ The initial three English commissioners were named in the Act. The three commissioners in India were to be appointed by the Governor General of Fort William in Bengal (acting in Council), and drawn from "the covenanted civil servants of the said United Company on the Bengal establishment": the 1806 Act, preamble. The commissioners were to be known as the Carnatic Commissioners (see the sidenote to section 9 of the 1806 Act).

⁵² The 1806 Act, preamble. Prior to undertaking this task, the commissioners were obliged to publish notices inviting persons resident in Europe, the East Indies and elsewhere, to submit claims, and then to publish schedules of claims made so as to afford an opportunity for "all such persons as should have any interest to oppose or impeach the same": *ibid.*

⁵³ The 1806 Act, preamble. One registrar was to be based in London, and the other in Madras. They were to maintain books of accounts setting out the sums awarded by the commissioners to different classes of creditor. The company had to approve the proposed appointments, and they were also entitled to dismiss those appointed.

7. The parties to the 1805 agreement recognised the need for legislative reinforcement to ensure “the due and faithful execution of the trusts reposed” in the commissioners. To this end, the 1806 Act was sought and obtained. In broad terms, the purpose of the 1806 Act was as follows:

- (a) to place the commissioners (and their successors) on a formal footing;⁵⁴
- (b) to authorise the commissioners to receive evidence orally or by “written interrogatories”, supported by oath or affirmation (administered by the commissioners or the courts);⁵⁵
- (c) to authorise the commissioners (in England and in India) to compel witnesses to attend to give evidence,⁵⁶ subject to reimbursing their costs and expenses;⁵⁷
- (d) to require the commissioners to present a report to Parliament at the beginning of each session, setting out a statement of the claims received in both England and India, and listing those claims which had been determined “either provisionally or absolutely”;⁵⁸
- (e) to provide a limitation period of six months for any legal action which might be commenced “for any thing done in pursuance of any of the [Act’s] provisions”;⁵⁹ and

⁵⁴ The 1806 Act, s 1. Each commissioner was obliged, on appointment, to be sworn into office, and to undertake to exercise his functions conscientiously in accordance with “the true intent and meaning” of the 1805 agreement and its signatories: *ibid.*

⁵⁵ The 1806 Act, s 2. Evidence could be received orally in person or by written affidavit or deposition. Any person who should “wilfully and corruptly give false evidence, or make any false answer, statement, or deposition” was liable to be punished for perjury: *ibid.*, s 3.

⁵⁶ The 1806 Act, ss 4, 5. The commissioners (or any two of them) could issue a “precept” or summons requiring personal attendance and production of documentation. The precept was to be endorsed with an indication of who (commissioners or parties) had sought the attendance. Wilful avoidance, absconding, defaulting to appear or produce relevant documents, or failing to be sworn or to testify, could lead to imprisonment “without bail or mainprize” pending the witness submitting to the tribunal: *ibid.*, s 6. However, no-one in the United Kingdom or India could be required to leave their jurisdiction to appear before commissioners: *ibid.*, s 7.

⁵⁷ The 1806 Act, s 8. Witnesses were entitled to be reimbursed the cost of attending and to receive “a reasonable compensation for his or her loss of time”, which moneys were to be paid before the appointed day. The bill was to be footed by the party seeking attendance or, where attendance was required by the commissioners themselves, by the company. Costs were to be quantified and awarded by the commissioners where there was dispute between the parties: *ibid.*

⁵⁸ The 1806 Act, s 9. The grounds for determination were also to be specified. Section 9 made clear on its face, however, that the 1806 Act was not to be taken as in any way ratifying or confirming the 1805 agreement, or extending its ambit.

⁵⁹ The 1806 Act, s 10.

- (f) to provide that the greater part of the 1806 Act, which vested powers in the commissioners, was time-limited and would “continue in force” until 1 August 1810.⁶⁰

Status of the 1806 Act

8. The purpose behind the 1806 Act was very narrow: to obtain Parliamentary sanction for the appointment of commissioners to resolve disputes relating to the Carnatic debts, and to provide them with powers of inquiry and determination. The East India Company was at that time responsible for the administration of the revenues of the Carnatic Payen Ghaut, through its treasury based in neighbouring Madras.

9. Although the 1806 Act stemmed from a private agreement executed in July 1805, in legislative terms it stood on its own. It did not rely on, or refer to, other legislation. The Act did not purport to extend or modify the terms of the 1805 agreement.

10. The powers vested in the appointed commissioners by the 1806 Act were specifically time-limited.⁶¹ That time limit was subsequently extended by later continuation Acts (see below), but the latest time limit has long since expired.

11. The East India Company, one of the parties to the 1805 agreement, was dissolved in 1874.

12. The 1806 Act is now spent, and may be repealed in whole.

Purpose of the continuation Acts

50 Geo.3 c.ciii (1810)

13. The powers conferred on the appointed commissioners by the 1806 Act (above) lapsed in 1810 (either in August of that year or, at latest, by “the end of the then next session of Parliament”).⁶²

⁶⁰ The 1806 Act, s 12. The commissioners' powers were allowed to continue in force beyond the stated date, but only up “until the end of the then next session of Parliament”: *ibid*. The remaining provisions of the 1806 Act (such as the limitation period for challenging decisions) lasted indefinitely.

⁶¹ The 1806 Act, s 12.

⁶² The 1806 Act, s 12.

14. Because it was “expedient, that the time during which the said powers and authorities should continue in force, should be enlarged”, and in order to keep the commissioners’ powers alive, the first of a series of six continuation Acts was passed in June 1810.⁶³ The 1810 Act “continue[d] in force” the powers vested in the commissioners (both present and future, and both in England and in India) for a further period of almost three years.⁶⁴

52 Geo.3 c.clxxxviii (1812)

15. The 1812 Act⁶⁵ continued the powers in the 1806 Act for a further four years from July 1812 until 1 August 1816 “and from thence until the end of the then next session of Parliament”.⁶⁶

57 Geo.3 c.viii (1817)

16. The 1817 Act⁶⁷ extended “the time during which the powers and authorities given by the [1806] Act were to continue” until 1 August 1818 “and from thence to the end of the then next session of Parliament”.⁶⁸ This extension amounted to an additional two years of authorisation.

59 Geo.3 c.xxvi (1819)

17. The 1819 Act⁶⁹ continued in force the powers and provisions of the 1806 Act until 1 August 1821 “and from thence to the end of the then next session of Parliament”.⁷⁰ This extension amounted to an additional three years of authorisation.

⁶³ Preamble to 50 Geo.3 c.ccciii (1810) (“the 1810 Act”), being “An Act to continue until the Twenty-fifth day of March One thousand eight hundred and thirteen, the Powers of the Commissioners appointed in pursuance of an Act of the Forty-sixth Year of His present Majesty [1806], for enabling the Commissioners acting in pursuance of an Agreement between the East India Company and the private Creditors of the Nabobs of the Carnatic, the better to carry the same into Effect”. According to the entry in the Chronological Table of Local Legislation, this Act was repealed in part by the Commercial Docks Act 1817 (57 Geo.3 c.lxii). This seems to be an error. The Commercial Docks Act 1817 specifically repealed the Commercial Docks Act 1810 (50 Geo.3 c.ccvii), not the 1810 Act to which we refer.

⁶⁴ The 1810 Act, s 1. The extended powers were expressed to lapse on 25 March 1813.

⁶⁵ Preamble to 52 Geo.3 c.clxxxviii (1812) (“the 1812 Act”), being “An Act for further continuing, until the First Day of August One thousand eight hundred and sixteen, and from thence until the End of the then next Session of Parliament, the Powers of the Commissioners appointed in pursuance of an Act of the Forty-sixth Year of His present Majesty, for enabling the Commissioners acting in pursuance of an Agreement between the East India Company and the private Creditors of the Nabobs of the Carnatic, to carry the same into Effect”.

⁶⁶ The 1812 Act, s 1. This continuation formula was the same as that used in the original 1806 Act, and reverted to the August anniversary.

⁶⁷ 57 Geo.3 c.viii (1817) (“the 1817 Act”), being “An Act for further continuing until the First Day of August One thousand eight hundred and eighteen, and from thence to the End of the then next Session of Parliament, the Powers given by an Act of the Forty-sixth Year of His present Majesty, for enabling the Commissioners acting in Execution of an Agreement made between the East India Company and the private Creditors of the Nabobs of the Carnatic, the better to carry the same into Effect”.

⁶⁸ The 1817 Act, preamble and s 1.

⁶⁹ 59 Geo.3 c.xxvi (1819) (“the 1819 Act”), being “An Act for further continuing, until the First Day of August One thousand eight hundred and twenty-one, and from thence to the End of the then next

3 Geo.4 c.xviii (1822)

18. The 1822 Act⁷¹ continued in force the powers of the commissioners for a further four years until 1 August 1825 “and from thence to the end of the then next session of Parliament”.⁷²

7 Geo.4 c.xli (1826)

19. The 1826 Act⁷³ continued in force the powers in the 1806 Act until 1 August 1829 “and from thence to the end of the then next session of Parliament”.⁷⁴ This added a further, and final, period of four years.

Status of the continuation Acts

20. The continuation Acts were each very brief. Each Act consisted of a preamble (reciting the legislative history) and two further sections. Section 1 continued the powers in the 1806 Act for the period specified, while section 2 was an evidential provision deeming the Act to be a “publick Act”.

21. The sole purpose of each continuation Act was to continue in force for a further finite term the powers specifically vested in the Carnatic commissioners. Those powers were time-limited from the 1806 Act onwards. The ancillary provisions in the 1806 Act, such as the limitation period for legal proceedings, were not time-limited.

22. The 1826 Act was the final continuation Act, and the extension period under that Act has long since expired. All the continuation Acts relied on the 1806 Act, and the 1805 agreement, for their existence.

Session of Parliament, the Powers granted by an Act of the Forty-sixth Year of His present Majesty, for enabling the Commissioners acting in Execution of an Agreement made between the East India Company and the private Creditors of the Nabobs of the Carnatic, the better to carry the same into Effect”.

⁷⁰ The 1819 Act, preamble and s 1.

⁷¹ 3 Geo.4 c.xviii (1822) (“the 1822 Act”), being “An Act for continuing, until the First Day of August One thousand eight hundred and twenty-five, and from thence to the End of the then next Session of Parliament, the Powers granted by an Act of the Forty-sixth Year of His late Majesty, for enabling the Commissioners acting in Execution of an Agreement made between the East India Company and the private Creditors of the Nabobs of the Carnatic, the better to carry the same into Effect”.

⁷² The 1822 Act, preamble and s 1.

⁷³ 7 Geo.4 c.xli (1826) (“the 1826 Act”), being “An Act for further continuing, until the First Day of August One thousand eight hundred and twenty-nine, and from thence to the End of the then next Session of Parliament, the Powers granted by an Act of the Forty-sixth Year of His late Majesty, for enabling the Commissioners acting in execution of an Agreement made between the East India Company and the private Creditors of the Nabobs of the Carnatic, the better to carry the same into effect”.

⁷⁴ The 1826 Act, preamble and s 1.

23. The East India Company, one of the parties to the 1805 agreement, was dissolved in 1874.

24. The continuation Acts are now spent, and may be repealed in whole.

Extent

25. The 1806 Act, and the six continuation Acts running from 1810 to 1826, applied to the United Kingdom (although in the main, only to England) and to the province of Madras, now the state of Tamil Nadu, in India.

Consultation

26. HM Treasury, the Foreign and Commonwealth Office, the Department for International Development, the Department of Trade and Industry and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

32-195-453
LAW/005/016/06
12 July 2006

<i>Reference</i>	<i>Extent of repeal or revocation</i>
5 Geo.4 c.cxvii (1824) (East India Company and the creditors of the Rajah of Tanjore)	The whole Act.
11 Geo.4 & 1 Will.4 c.xxxiii (1830) (East India Company and the creditors of the Rajah of Tanjore)	The whole Act.

Background to the legislation

1. The princely state of Tanjore was located on the east coast of South India within the presidency of Madras. Tanjore was a Maharatta state originally ruled over by a Hindu rajah, and became a British protectorate in 1793.

2. His Highness the Rajah Ameer Sing reigned in Tanjore between 1793 and 1798. After the wars with the nawab of Arcot in 1771 and 1773, the rajah, his state and the state revenues were under the control of the nawab of Arcot. This continued until Tanjore was annexed to British India in 1799.⁷⁵

3. During his reign, the Rajah of the state of Tanjore (His late Highness Ameer Sing) had incurred debts to several (unnamed) creditors.⁷⁶

5 Geo.4 c.cxvii (1824)

Purpose

4. By 1824 the debts remained outstanding. The East India Company was responsible for collecting the revenues due to the Rajah of Tanjore. Various creditors (or claimants) had entered into articles of agreement, in February of that year, with the East India Company, to the effect that a mechanism would be put in place to adjudicate upon the validity of the claims (which would then be submitted to the company for payment from a specially appointed fund).⁷⁷

⁷⁵ When Serfoji II ascended the throne in 1799 he transferred the sovereignty of Tanjore absolutely to the East India Company, who administered the area as a subsidiary of the British Crown. He retained title to the capital of Tanjore, and a small stretch of land surrounding it. Rajah Serfoji II died in 1833 and was succeeded by his son, Sivaji. For further information about Tanjore see <http://en.wikipedia.org/wiki/Thanjavur> and P Lawson, *The East India Company: A History* (1993).

⁷⁶ The purpose of these debts, which may have encompassed more than loans, is not specified on the face of the relevant legislation.

⁷⁷ The agreement was dated 11 February 1824: see preamble to 5 Geo.4 c.cxvii (1824) (“the 1824 Act”), being “An Act for enabling the Commissioners acting in Execution of an Agreement made between the East India Company and the private Creditors of His late Highness Ameer Sing, formerly Rajah of Tanjore, deceased, the better to carry the same into effect”.

5. The arrangement involved the appointment of six commissioners (three in England and three in India) who were charged with identifying the claimants, reviewing the claims and then determining which claims should be eligible for payment. The 1824 agreement laid out the following rubric:

- (a) the various creditors were to be entitled to claim for the principal sums owed in respect of “good, just, valid, and valuable considerations”, together with simple interest accrued “from the time when such debts were severally contracted”;⁷⁸
- (b) the claims had to be capable of being settled by the company drawing “transferrable bonds or certificates, to be issued by the Madras Government”;⁷⁹
- (c) three named individuals were to be the first commissioners based in England, and “in order to the more complete investigation of the matters thereby submitted” to them, their efforts were to be supplemented by three “commissioners and referees in India” sitting at Madras;⁸⁰
- (d) the commissioners were required to publish notices, both in Europe and in the East Indies, inviting submission of claims by creditors. The claims would then be scheduled and made available to the company so as to afford it “liberty to dispute and oppose” the debts as appropriate. In addition, the parties were allowed time to advance their cases “by argument or proof”;⁸¹

⁷⁸ As recited in the preamble to the 1824 Act. Interest was to cease running as at 30 April 1823, and the amounts claimed were to be net of any payments already received.

⁷⁹ The 1824 Act, preamble (and art 1 of the agreement). The bonds or certificates were to carry interest of 4% p.a., running from 30 April 1823, but only “so long as the revenues of Tanjore should continue to be in the possession of the said United Company”: *ibid.*

⁸⁰ The 1824 Act, preamble (and arts 2, 3 of the agreement). The three Indian-based commissioners were to be appointed “from amongst the covenanted civil servants of the said United Company on the Bengal establishment” by the Governor General of Fort William in Bengal (acting in council): *ibid.*

⁸¹ The 1824 Act, preamble (and art 5 of the agreement). Proof could be adduced orally, by “examination on written interrogatories”, by affidavit and by production of documents. By article 8 of the agreement the Indian commissioners were required to make the submitted claims schedule available to the Madras Government (via the Governor in Council of Fort Saint George) for objection. The Indian commissioners were to act in identical manner to the English commissioners, and were to investigate and “to decide finally on every claim so to be preferred to them” (including those referred by their English counterparts), but only in respect of those claims where the original principal sum did not exceed 1,000 rupees.

- (e) the company was entitled to lay down a limitation period after which the lodging of further claims would be barred;⁸²
- (f) once the total debts had been established, the company was obliged to draw down from the Tanjore revenues (“from time to time [but only] so long as they should remain in possession of the said United Company”) sufficient sums as would cover the payment of interest and discharge of the principal secured by the bonds and certificate;⁸³ and
- (g) in return for these arrangements, the various creditors would accept the company’s “covenants and engagements...in full satisfaction and discharge of all claims and demands whatsoever” which they had against the Rajah of Tanjore.⁸⁴

6. So as to formalise and reinforce the processes within the agreement, the 1824 Act was promoted to provide the appointed commissioners with enforceable powers and to ensure their diligent execution.

7. The purpose of the 1824 Act was (in broad terms) to provide that:

- (a) all commissioners were, on appointment, to take an oath of office by which they undertook to carry out their functions “faithfully, impartially, and truly”,⁸⁵
- (b) the commissioners were to be empowered to take sworn evidence, both orally and in writing,⁸⁶
- (c) the commissioners be empowered to issue a “precept” to summon a witness to give evidence and produce relevant documents;⁸⁷

⁸² The 1824 Act, preamble (and art 9). This limitation period was to be notified by the company to the commissioners in England.

⁸³ The 1824 Act, preamble (and art 10). Annual payments (equal to 5% of the total principal sum outstanding) were to go into an accumulating sinking fund which would be used for eventual discharge of the principal, with simple interest at 4% p.a.

⁸⁴ The 1824 Act, preamble (and art 16).

⁸⁵ The 1824 Act, s 1. This requirement applied to the commissioners sitting both in England and in India.

⁸⁶ The 1824 Act, s 2. The giving of false evidence by a witness was to amount to perjury, punishable by law: *ibid.*, s 3.

⁸⁷ The 1824 Act, s 4. A witness “precept” (summons) could be issued by the commissioners at their own behest, or on the application of any party with an interest in the matter before them. The summons had to state on whose motion it was issued: *ibid.*, s 5. No-one in the United Kingdom or India could be required to leave their jurisdiction to appear before commissioners: *ibid.*, s 7. Any individual summoned

- (d) the English commissioners should place before each session of Parliament a schedule of claims received and of those adjudicated upon;⁸⁸
- (e) legal proceedings for any cause arising under the 1824 Act were to be commenced within six months of that occurrence, after which they would be time-barred,⁸⁹ and
- (f) finally, that the powers vested in the commissioners by the 1824 Act were to continue in force until 1 August 1828 “and from thence until the end of the then next session of Parliament”.⁹⁰

Status of the 1824 Act

8. The 1824 Act was promoted in order to underpin the provisions of the agreement signed with the known creditors in February of that year. Apart from reciting terms within that agreement it did not refer to any other provision, statutory or non-statutory.

9. The powers vested in the English and Indian commissioners by the 1824 Act were specifically time-limited.⁹¹ That time limit was extended by subsequent legislation, but even the additional period has long since expired.

10. The East India Company, one of the parties to the 1824 agreement, was dissolved in 1874.

11. The 1824 Act is now spent, and may be repealed in whole.

who wilfully failed to appear or to produce documents, or refused to be sworn, was liable to be arrested and held in prison “without bail or mainprize” until they submitted to the commissioners’ jurisdiction: *ibid.*, s 6. A summoned witness was entitled to be reimbursed both for the costs of their attendance and for their loss of time (to be borne by either the company or the instigating party): *ibid.*, s 8.

⁸⁸ The 1824 Act, s 9. The list of claims was to include those received in England and in India, and the determinations were to include “the grounds of their decision”: *ibid.* This requirement, and the 1824 Act itself, were not to be construed as in any way ratifying, or broadening the scope of, the original 1824 agreement.

⁸⁹ The 1824 Act, s 10.

⁹⁰ The 1824 Act, s 12.

⁹¹ The 1824 Act, s 12.

11 Geo.4 & 1 Will.4 c.xxxiii (1830)

Purpose

12. The powers conferred on the English and Indian commissioners by the 1824 Act expired by effluxion of time in 1829.

13. By 1830 it had become clear that the period of authorisation, “which has now expired, should be renewed and further continued”.⁹² In order to rectify this lapse, a continuation Act was secured in 1830. The 1830 Act simply “renewed and continue[d] in force” the powers until 1 August 1833 and “from thence to the end of the then next session of Parliament”.⁹³

Status of the 1830 Act

14. The 1830 Act comprised only a preamble and two short sections.⁹⁴

15. The Act’s sole purpose was to keep alive, for a finite period, the powers vested in the commissioners by the original 1824 Act. This it did, but the extended period has now long since expired.

16. No further legislation was promoted to extend the life of the 1824 Act powers.

17. The East India Company was dissolved in 1874.

18. The 1830 Act is now spent, and may be repealed in whole.

Extent

19. The 1824 and 1830 Acts applied to the United Kingdom (although, in the main, only to England) and to the province of Madras, now the state of Tamil Nadu, in India.

⁹² Preamble to 11 Geo.4 & 1 Will.4 c.xxxiii (1830) (“the 1830 Act”), being “An Act to continue An Act of the Fifth Year of His present Majesty, for enabling the Commissioners acting in execution of an Agreement made between the East India Company and the private Creditors of the late Rajah of Tanjore the better to carry the same into effect”.

⁹³ The 1830 Act, s 1. Given the loose wording of the section, it may well be that its effect was to provide the commissioners, over the short period of lapse, with retrospective authorisation.

⁹⁴ The preamble recited the existence and purpose of the 1824 Act (above). Section 2 of the 1830 Act was a deeming provision only, to the effect that the Act was to be treated for court evidence purposes as “a public Act” (*ie.* self-producing).

Consultation

20. HM Treasury, the Foreign and Commonwealth Office, the Department for International Development, the Department of Trade and Industry and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
2 & 3 Will.4 c.cxii (1832) (East India Company and discharge of loan to the Zemindar of Nozeed and Mustaphanagur)	The whole Act.

Background to the legislation

1. The zamindars (or zemindars) were holders of local land interests who took on police, judicial and military duties. They were answerable to the ruler of the state or region where their interests were located. The scope of their duties was determined by the size of the landholding which supported their interests. The land itself was owned by the raiyats (peasants) but the zamindars held a proprietary interest in the revenue from the land. They collected the rent and passed it to the government.⁹⁵

2. The zamindari continued to be used as the main system of tax collection by the British in colonial India. After independence, the zamindari was abolished as a practical tool, but the titles were retained.

3. In the “presidency of Madras”,⁹⁶ the Zemindar of Nozeed and Mustaphanagur (the late Macca Narsinva Opparow) had, prior to 1776, become indebted to one James Hodges (and others) by loans which “the better enabled [him] to pay the tribute and kists due from the said Zemindar to the United [East India] Company”.⁹⁷

2 & 3 Will. 4 c.cxii (1832)

Purpose

4. By 1832 the loan debt remained unpaid. James Hodges had died in September 1794, leaving his grandson (Captain James Murray, Royal Navy) as personal representative for the estate to pursue the claim. That claim was made against the East India Company because of that body’s earlier sequestration (in

⁹⁵ See http://banglapedia.search.com.bd/HT/Z_0009.htm.

⁹⁶ Presidencies were formed within the regions of India under direct English rule. In Madras, the region was governed by a president and council. Sub-regions (such as Masulipatam) were governed by a chief and council.

⁹⁷ Preamble to 2 & 3 Will. 4 c.cxii (1832) (“the 1832 Act”), being “An Act for providing for the Discharge of a Claim in respect of Monies advanced by the late James Hodges Esquire on Security of the Lands of the late Zemindar of Nozeed and Mustaphanagur in the District of Fort Saint George in the East Indies, now under the Government of the Honourable the East India Company”.

1779) of the zemindary's assets "on account of large alleged arrears of tribute then due to the said company".⁹⁸

5. In November 1784, the president and council of Madras had ordered the chief and council of Masulipatam to require the zemindar's creditors to release the security for their debts. In return for this the president and company were "willing to recommend" to the company that the creditors be reimbursed their loans. These reimbursements were to be subject to the company's position as superior creditor being adequately protected. The various creditors' loans had been secured by mortgage on "districts" owned by the zemindar.⁹⁹

6. Acting on the assurances received, in December 1784 James Hodges surrendered the various villages he held, and rendered an account for the balance of his loan then outstanding (being 58,955 Madras pagodas and 25 fanams), which the president and council endorsed. The company took over management of the villages.

7. In February 1785, the Madras presidency advised the Masulipatam council and James Hodges that, because the "heavy balance" due to the company had yet to be discharged, the creditors would have to wait before the recommendation could be considered by the "said governor and council".¹⁰⁰ Hodges applied to the company in April 1792 for restitution of the villages or compensation in lieu, but he was refused on both counts (as, subsequently, were his widow and representatives).¹⁰¹

8. By 1803, with the "introduction of the permanent settlement of the landed revenues into the presidency of Madras", the Opparow family were restored to the zemindary, and the company relinquished its claim for "all arrears of revenue up to that time".¹⁰²

⁹⁸ The 1832 Act, preamble.

⁹⁹ The 1832 Act, preamble. The president and council had calculated that the Nozeed zemindary was practically insolvent. It would take up to twelve years for the zemindary to "discharge the public demands on it", taking into account the need to make provision for the zemindar's son and for the "annual tribute": *ibid*.

¹⁰⁰ The 1832 Act, preamble. The reference to "the said governor" in the text seems to be an error; presumably the draftsman meant "the said president".

¹⁰¹ They also made representation to the Commissioners for the Affairs of India, without success. Eventually the claims became time-barred, denying them any relief through the courts.

¹⁰² The 1832 Act, preamble.

9. After nearly forty years of haggling, the company, in its “political capacity”, recognised (notwithstanding the 1803 settlement) that there was a legitimate expectation that the loans originally “sanctioned by their government” should be repaid, on the basis of the 1784 account.

10. To this end, the 1832 Act was promoted to provide authority for the East India Company to pay the amount due to the personal representative from the revenues received from the zemindary.¹⁰³ That payment was stipulated to be made “in this country” (*ie.*, in England), by July 1833, at an exchange rate of eight shillings per pagoda.¹⁰⁴

Status of the 1832 Act

11. The 1832 Act was a very short piece of legislation, designed solely to sanction the settlement of a long-standing financial dispute. Although the Act recited specific understandings and events, in legislative terms it stood alone.

12. Authority for the making of payment by the East India Company expired by mid-July 1833. It was not extended by later legislation.

13. The East India Company was dissolved in 1874.

14. The 1832 Act is now spent, and may be repealed in whole.

Extent

15. The 1832 Act applied to England and to the province of Madras, now the state of Tamil Nadu, in India.

Consultation

16. HM Treasury, the Foreign and Commonwealth Office, the Department for International Development and the Department of Trade and Industry have been consulted about these repeal proposals.

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¹⁰³ The 1832 Act, preamble and s 1.

¹⁰⁴ The 1832 Act, s 2. The time limit for payment was expressed to be “within one year from the passing of this Act”: *ibid.* The Act received Royal Assent on 11 July 1832. The remaining section of the Act (s 3) simply deemed it a public Act for the purpose of any judicial proceedings.