THE INDIAN STATES UNDER THE GOVERNMENT OF INDIA ACT, 1935.

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BY

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BOMBAY

D. B. TARAPOREVALA SONS & CO.

"*Treasure House of Books*"

HORNBY ROAD, FORT

STOCK TAKING - 2011

Published by Jal Hirji Taraporevala B. A., for
Messrs. D. B. Taraporevala Sons & Co., Hornby Road, Fort, Bombay; and
Printed by E. A. Krauss at the Basel Mission Press, Mangalore, S. K.

WITH GRACIOUS PERMISSION
RESPECTFULLY DEDICATED TO
LT. COL. HIS HIGHNESS SRI SEWAI MAHARAJ RANA
SIR UDAI BHAN SINGH LOKINDRA BAHADUR
G. C. I. E., K. C. S. I., K. C. V. O.
OF DHOLPUR
IN TOKEN OF
AUTHOR'S HUMBLE ADMIRATION FOR HIS HIGHNESS'S
BENEVOLENT ADHERENCE TO TRUTH, JUSTICE AND
FAIR PLAY.

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CHAPTER I

THE ADVENT OF THE BRITISH SOVEREIGNTY

It is interesting to follow the growth of the British Sovereignty over Indian States from the beginning of the nineteenth century. It was then that the East India Company having assured its supremacy of Arms in India, tried to systematize its relations with the then existing Indian Kingdoms.

As early as eighteen hundred and three, Sir John Barlow summarizes the policy of the East India Company towards the Indian States in these words: "It is absolutely necessary for the defeat of those designs (The subversion of the British Empire in India) that no Native State should be left to exist in India which is not upheld by the British power or the political conduct of which is not under its absolute control." Again on 4th February 1804, Lord Wellesly's Government wrote to the Resident at Hyderabad: "The fundamental principle of His Excellency the Governor General's policy in establishing a subsidiary alliance with the principal States of India is to place those States in such a degree of dependence on the British power as may deprive them of the means of prosecuting any measures or of forming any confederacy hazardous to the security of the British Empire, and may enable us to preserve the tranquillity of India by exercising a general control over these States."

As long as the nominal equality of status existed, as implied by such terms as "alliance", "independentally" and "mutual friendship" occurring in the body of Treaties, the States of India were counted as living kingdoms; and the British tried to live within the bounds of International Law. But in the course of time the British power increased gradually at the expense of the Indian States. It seems there is no International Law to protect the weak against the strong. It certainly did not protect Abbysinia against Italy in spite of the continued existence and repeated professions of the League of Nations.

Lord Wellesly recognising the opportune moments, advocated the need of an advanced policy and while forming alliances with

some of the Rajput Chiefs, for the first time introduced the word "Obedience" in the Treaties, as for instance with Datia. But his successor Lord Cornwallis dissolved some of the engagements and in 1809 Lord Minto even refused to enter into alliance with Bhopal. Lord Hastings inaugurated the policy of "Subordinate Isolation" in 1813. It had become necessary for Hastings to abandon the policy of absolute non-interference as the reactions of subsidiary alliances were till then absolutely clear. By the subsidiary alliances, the foundation of the Military Supremacy of the Company and of the consequent dependence of the States on the Company's arms were laid. A State which depended on such support of the Company's troops was described by Sir John Malcolm as one, "which our over-shadowing friendship has shut out from the sunshine of that splendour which once gave lustre almost to its vices." Thus being protected and propped up by alien Rulers, the Indian Chiefs lost all incentive to be good and benevolent Rulers and resorted to an unenviable life of gradual degradation and dependence, which resulted in gross misrule and open discontentment in their States. Such conditions gave the much wanted excuse to the British Government to intervene in the name of the protection of humanity from oppression.

Referring to the subsidiary force on which very important States depended for self-defence in the nineteenth century, Munro wrote to Lord Hastings in 1817, "It has a natural tendency to render the Government of any country in which it exists, weak and oppressive; to extinguish all honourable spirits among the higher classes of societies and to degrade and impoverish the whole people. The usual remedy of a bad Government in India is a quiet revolution in the Palace or a violent one by rebellion or foreign conquests. But the presence of British Force cuts off any chance of a remedy by supporting the Prince on the throne against any foreign or domestic enemy. It renders him indolent by teaching him to trust to strangers for his security; and cruel and avaricious by showing him that he has nothing to fear from the hatred of his subjects." Russel also said the same thing in his evidence before Parliament, "The habit of going upon crutches deprives the Prince of the use of his limbs."

Sir Lee Warner briefly narrates the British policy of the East India Company in these words, "The East India Company at first

imagined that by treating the Princes as independent nations and retiring behind the ring-fence of its own territories, it could effect its own objects. Experience proved that its "Equal Allies" were not equal. Clinging to its desire to maintain the native States, but hampered by traditions of an International Position, the Company next introduced the policy of Subordinate Isolation. The rapidity of annexations, consequent on the doctrine of non-intervention and on the retention of the empty shell of international status, once more warned the British that a change of policy was needed. The States must be saved even against themselves from the penalty of annexation and the protecting power must be saved from the reproach of supporting oppression by the exercise of timely intervention".

This policy of veiled and peaceful penetration into the affairs of Indian States was carried on till the Mutiny in 1857. It, of course, included the important period of Lord Dalhousie with his notorious doctrine of lapse. Most of the treaties with Indian States were concluded in this period. These treaties though unchanged on paper have naturally been profoundly influenced by the change of circumstances in the country.

The clouds of Mutiny having disappeared, the British power came out as the unrivalled master of the situation, the name of the British Crown having been substituted for the East India Company. The part played by the Indian Princes in helping the British Government to quell the rebellion is for all times a proud record. The documents left by Sir John Lawrence and others bear eloquent testimony to the invaluable support given by the Indian Princes at a time when their abstention would have for all purposes changed the future history of the country.

However, the British Government having secured their suzerainty in the country, displayed further changes of policy towards the Indian States. A letter from Lord Canning in 1860 describes the Government policy in these words: "The last vestige of the Royal House at Delhi from which we had long been content to accept a vicarious authority, has been swept away. The Crown of England stands forth the unquestioned Ruler and paramount in all India, and brought face to face with the feudatories. The immediate consequence was to abolish all reserve as to timely interference to prevent mis-rule. This distinction between the

independent and dependent States lost its significance. Sanads of adoption and succession were conferred upon the Rulers of larger States. The doctrine of lapse gave place to a public assurance of the desire of the paramount power to perpetuate the houses of the principal ruling families. Treaties were no longer made as if between equals; engagements and Sanads breathed a new spirit of subordinate co-operation on the part of the native Princes. The process of consolidating British dominion was continued by arrangements with the States and not by annexation. The territories under the suzerainty of the Crown became at once as important and integral a part of India as territories under its direct domination. Together they formed one care, and the political system which the Mughals had not completed, and the Marhattas never contemplated, is now an established fact of history". Lord Canning made another formal declaration regarding the rights of the native Princes which says: "Her Majesty being desirous that the Governments of the several Princes and Chiefs of India who now govern their territories should be perpetuated, and that the representation and dignity of their houses should be continued, I hereby in fulfilment of this desire convey to you the assurance that, on failure of natural heirs, the adoption, by yourself and the future Rulers of your States, of a successor according to Hindu or Mohammedan law and the customs of your race, will be recognised and confirmed. Be assured that nothing shall disturb the engagement just made to you so long as your house is loyal to the Crown and faithful to the conditions of the treaties, grants and engagements which record its obligations to the British Government."

The pre-war relations of the British Government with the States can be briefly summarised in the following words. This policy has changed from time to time, passing from the original plan of non-intervention in all matters beyond its own ring-fence to the policy of subordinate isolation initiated by Lord Hastings; which in its turn gave way before the conception of the relation between the States and the Government of India which may be described as one of union and co-operation on their part with the paramount power. In spite of the varieties and complexities of treaties, engagements and Sanads, the general position as regards the rights and obligations of the native States can be summed up in a few words. The States are guaranteed security from without,

the paramount power acts for them in relation to foreign powers and other States, and it intervenes when the internal peace of their territories is seriously threatened. On the other hand the States' relations to foreign powers are those of the paramount power; they share the obligation for the common defence; and they are under a general responsibility for the good Government and welfare of their territories.

Then came the Great war, and the part played by the Indian States is well known to the students of Indian history. The report on Indian Constitutional Reforms of 1918 records the services of the Indian States in these words, "No words of ours are needed to make known the services to the Empire which the States have rendered. They were a profound surprise and disappointment to the enemy; and a cause of delight and pride to those who knew before-hand the Princes' devotion to the Crown. With one accord the Rulers of the Native States in India rallied to fight for the Empire when war was declared; they offered their personal services, and the resources of their States. Imperial service troops from over a score of States have fought in various fields, and many with great gallantry and honour. The Princes have helped lavishly with men and horses, material and money, and some of them have in person served in France and elsewhere. They have shown that our quarrel is their quarrel; and they have both learned and taught the lesson of their own indissoluble connection with the Empire, and their immense value as part of the polity of India."

Immediately after the war other political movements gained importance in India, mainly the Indian National Congress, which aimed at political emancipation of the country, and of an increased share of Indians in the working of the Indian Government. These movements were bound to have their natural repurcussion on the minds of State subjects. It is believed that the trend of events must draw the native States still closer into the orbit of the Empire. This process need not give rise to any alarm regarding the maintenance of internal autonomy in the States. However, it cannot be denied that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character.

As early as 1918, the Report on Indian Constitutional Reforms forecasted about India presenting the external semblance of some form of Federation. They said that though they had no hesitation in forecasting such a development, the last thing they desired was to attempt to force the pace. In their view, influences were at work which needed no artificial stimulation.

CHAPTER II

SOVEREIGNTY OF INDIAN STATES

The existence of the Crown's Paramountcy in relation with the Indian States does not necessarily affect the internal sovereignty of the States. Sir Henry Maine wrote in his minute on Kathiawar: "Sovereignty is a term which, in international law, indicates a well-ascertained assemblage of separate powers or privileges. The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate is called an independent sovereign; but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor, and some with another. Sovereignty has always been regarded as divisible . . . It may perhaps be worth observing that, according to the more precise language of modern publicists, 'sovereignty' is divisible but independence is not. Although the expression 'partial independence' may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government."

Hall, while speaking about this subject in his Treatise on International law says: "For the purposes of International Law, a protected State is one which, in consequence of its weakness, has placed itself under the protection of another power on defined conditions, or has been so placed under the arrangement between powers, the interests of which are involved in the disposition of its territory."

"Protected States such as those included in the Indian Empire of Great Britain are not subjects of International Law. Indian Native Princes are theoretically in possession of the internal sovereignty, and their relations to the British Empire are in all cases more or less defined by treaty; but in matters not provided for by treaty "residuary jurisdiction" on the part of the Imperial

Government is considered to exist, and the treaties themselves are subject to the reservation that they may be disregarded when the supreme interests of the Empire are involved, or even when the interests of the subjects of the Native Princes are greatly affected. The treaties really amount to little more than statements of limitations which the Imperial Government, except in very exceptional circumstances places on its own action. No doubt this was not the original intention of many of the treaties, but the conditions of English sovereignty in India have greatly changed since these were concluded, and the modifications of their effect which the changed conditions have rendered necessary are thoroughly well understood and acknowledged. By the notification in its official Gazette of August 21, 1891, the Indian Government declared that "the principles of International Law have no bearing upon the relations between itself and the Native States under the suzerainty of the Queen Empress. The rulers of these States are not, however, on the same level as ordinary British subjects as regards the jurisdiction of Courts of Law, Statharm v. Statham and the Gaekwar of Baroda, L. R. (1912), p. 92." Thus the principles of comity which exempt one foreign sovereign from the processes of the Courts of another have been applied in the dealings between the Paramount Power and the States. Acts done by the Paramount Power in the exercise of its authority in relation to the States are Acts of State which are not cognisable by any Court in either British India or in Great Britain (Secretary of State for India in Council v. Kamachee Boye Sahaba (1859) 13 Moo. P. C. C. 22; Salaman v. Secretary of State for India in Council, 1906 I. K. B. 613).

Professor Westlake while describing the limitations on the powers of Indian Princes with regard to their foreign relations and domestic obligations thinks that the Native Princes have no international existence and that the different declarations from the British Government are only niceties of speech handed down from old days and now devoid of any international significance.

Sir Tupper views them as fiefs in an indigenous species of feudalism. Sir LeeWarner thought them to be 'Sui generis'. In view of all these opinions the position of the Indian States has been described as Quasi-International. It is admitted that the sovereignty of the States has never been written away by any

treaties with the British Government. Such treaties modified by further political development in the country may have diminished the sphere of the operations of State's sovereignty, but it never follows that the sovereignty of the States has ceased to exist. The famous case of Mighell vs. Sultan of Johore supports this view. In this case Justice Kay held that, "The agreement by the Sultan not to enter into treaty with other powers does not seem to me to be an abnegation of his right to enter into such treaties, but only a condition upon which the protection stipulated for is to be given. If the Sultan disregards it, the consequence may be the loss of that protection or possibly other difficulties with this country; but I do not think that there is anything in the treaty which qualifies or disproves the statement in the letter that the Sultan of Johore is an independent sovereign."

Many authoritative and royal declaration, treaties and other relevant instruments declare the States to be in possession of sovereignty. On the occasion of the inauguration of the Chamber of Princes, His Royal Highness the Duke of Cannaught further assured the Princes that the sanctity of the treaties is a cardinal article of Imperial Policy and that the Government will recognise freely the internal sovereignty to which the various treaties and engagements entitle them. Lord Chelmsford in his speech at the Princes' Conference in January 1919 affirmed that the Indian Rulers enjoy the rights of internal sovereignty. Then came the Indian States Enquiry Committee presided over by Sir Harcourt Butler. The definite finding of the Committee about, "Independent Sovereignty of the Indian States is as follows:—

"It is not in accordance with historical fact that when the Indian States came into contact with the British Power they were independent; each possessed a full sovereignty and a status which a modern International lawyer would hold to be governed by rules of international law. In fact, none of the States ever held international status. Nearly all of them were subordinate or tributary to the Moghul Empire, the Mahratta supremacy, or the Sikh kingdom and dependent on them. Some were rescued, others were created by the British". (Para 39.)

" . . . It may perhaps be worth observing that according to the more precise language of modern publicists, "sovereignty" is divisible but independence is not. Although the expression 'partial

independence' may be popularly used, it is technically incorrect. Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government." (Para 44.)

The Government of India Act 1935 further admits the possession of sovereignty by the Indian Rulers in as much as the draft Instrument of Accession under section 6 of the Act contains an express reference to the sovereignty of the Rulers. Section 47 of the Act also clearly refers to the sovereignty of His Exalted Highness the Nizam of Hydrabad over Berar.

It has further to be seen how far the sovereignty of the States can be affected, if at all, by their entry into the Federation. There can be no two opinions about the fact that the States will for the first time in their history allow a foreign body to legislate for subjects on which the States will agree to federate. The sovereignty of the States as regards such federal subjects has to be unquestionably surrendered. It may also be observed here that the Australian High Court has held that, "The appellation Sovereign State as applied to the construction of the Commonwealth constitution is entirely out of place and worse than unnecessary" (Commonwealth of Australia vs. the State of New South Wales 1923, 32 C. L. R., 310.)

During the discussions in London preliminary to the Federal Act, the Secretary of State once said in reply to an objection on behalf of the States, "A Federation is the union of a number of political communities for certain common purposes; and every such union necessarily involves that some of the powers of each federating community shall with its assent thereafter be exercised by a central authority or authorities on behalf of all. It is this organic connection between the federal units themselves and between each of them and the central authority, which distinguishes a federation from a mere alliance or confederacy. His Majesty's Government have never contemplated a federation of India only as an association in which British India on the one hand and the Indian States on the other would do no more than act in concert on matters of common concern." Thus it is probable that after the inauguration of the federation the interests of the States in federal subjects will have to be subordinated to a uniform policy conducted in the name of the country as a whole.

In view of its possible reflection on sovereignty the States claimed that the Instruments of Accession to the federation should be held to be a treaty. The Princes contended in their White paper, "These treaties of Accession were intended to be bilateral in character, creating rights and imposing reciprocal obligations both on the Rulers of the Indian States and on the Crown. If the Rulers delegated certain portions of their sovereignty and internal jurisdiction to the Crown they also expected that the Crown would accept liability to preserve and safeguard the whole of their sovereignty and internal autonomy, not specifically thereby safeguarded, from any encroachment in future." In reply to this argument the Secretary of State while not recognising the Instruments to be a treaty said, "These Instruments are bilateral in so far as they have no binding force until His Majesty has signified his acceptance of them; but His Majesty's Government cannot on that ground accept the view that they are to be described as treaties. Such rights and obligations as flow from the execution and acceptance of an Instrument of Accession are to be found in the terms of the Act subject only to those conditions and limitations set out in the Instrument for which the Act makes provision. The Crown assumes no obligations by virtue of its acceptance of the Instrument of Accession other than those which are defined in the Act".

The use of the word Instrument in place of the word treaty in the sections of the Act referring to the accession of the States is no doubt deliberate, although during the discussions at the Round Table Conferences and in the Secretary of State's evidence before the Joint Parliamentary Committee the expressions Instrument and treaty were both used in reference to this document. In the opinion of Mr. J. H. Morgan, K. C., Counsel to the Chamber of Princes, the word Instrument was the only term appropriate and consistent with the establishment of such a federation. According to him treaties are always terminable, if not by notice, then by that doctrine of change of circumstances known as 'Rebus sic stanibus'. But the proposed federation, like every other federation is not terminable—it is perpetual. The rule of construction applicable to treaty, namely that "No treaty can be taken to restrict by implication the exercise of rights of sovereignty" (Hall, International Law, page 394) has consequently no application to

the Instrument of Accession. The States acceding to the federation must be prepared to find that they have by mere implication given up many powers the surrender of which is nowhere to be found in their Instruments of Accession. If these Instruments were treaties in the proper sense of the word, which they are not, no such implication would be involved.

Thus we find that an Act of the British Parliament will be directly applicable to the States. The argument that the said Act will apply by a definite agreement only and that even for limited purposes, does not take away the glaring fact that the federal constitution set up by a statute of Parliament will be operative in the acceding Indian States for the first time in their history.

It is vain to suppose that under such circumstances, the sovereignty of the States will remain scrupulously unimpaired. Professor J. Westlake has very ably summarised the different phases of sovereignty of the States in relation with the British Government. He observed that the constitutional relations between the Indian States and the Government of India have been imperceptibly shifted from an international to an Imperial basis; the process has been veiled by the prudence of statesmen, the conservatism of lawyers and the prevalence of certain theory about sovereignty.

CHAPTER III

PARAMOUNTCY

It is difficult to set sail on the uncharted sea of paramountcy whose shores can seldom be discerned. The origin and growth of paramountcy affords an interesting subject of political science to follow. From comparatively unostentatious beginnings, it has developed into an all powerful and never failing device in the hands of the British Government. It does not seem to be capable of any international analysis, but it is there and certainly not in a dormant form. In the words of Sir W. Barton, "paramountcy is the outcome of military supremacy over the great sub-continent of India, an inevitable corollary of a military protection". The Indian States Enquiry Committee, otherwise known as Butler Committee defines the paramount power as "The Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain".

The paramountcy of the Crown is not limited to the terms of different treaties, engagements of Sanads. It works beyond all such limitations and claims the sanction to do so under the excuse of usage, sufferance and similar other causes.

The Government of India had made the following pronouncement in 1877, which the Butler Committee has also quoted with approval in para 41, "The paramount supremacy of the British Government is a thing of gradual growth; it has been established partly by conquest; partly by treaty; partly by usage; and for a proper understanding of the relations of the British Government to the Native States, regard must be had to the incidents of this de facto supremacy, as well as to treaties and charters in which reciprocal rights and obligations have been recorded, and the circumstances under which those documents were originally framed. In the life of States, as well as of individuals, documentary claims may be set aside by overt acts; and a uniform and long-continued course of practice acquiesced in by the party against whom it tells, whether that party be the British Govern-

ment or the Native State, must be held to exhibit the relations which, in fact, subsist between them". To guarantee to protect a Prince against insurrection, in the opinion of the Butler Committee, carries with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances and an obligation to prescribe the necessary measure to this result.

Under the name of paramountcy, we find that the Maharaja of Nabha was forced to abdicate in 1922 for "The deliberate perversion of justice by his courts". Later on in 1928 he was transported to Kodaikanal for having been suspected of disloyalty and seditious associations. Any such charges against the Maharaja were never judicially determined. Paramountcy interfered with Udaipur State administration. One of the grounds for it being, that the Ruler was too old to carry on the centralised administration of the State. The letter addressed to the Ruler of Udaipur says, "The mere fact however, that the whole of the administrative arrangements have been concentrated in Your Highness's hands, has lately rendered Your task impossible of achievement. The result was that education in the State was backward, that roads and irrigation were neglected; that currency was not stabilised; that there were disputes between the State and the Thakurs; that criminal trials were dilatory; that subordinate officials were low paid; that the central hospital was out of date and that the dispensaries in the State were too few". It was on these grounds that the Maharana of Udaipur was compelled to abdicate most of his powers in favour of his son.

In concluding the discussions with His Exalted Highness the Nizam of Hydrabad on the question of Berar, Lord Reading, then Viceroy of India wrote in 1926, "The sovereignty of the British Crown is supreme in India. Quite apart from its prerogatives in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India. The consequences that follow are so well known and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary to point them out .... The right of the British Government to intervene in the internal affairs of Indian States is another instance of

the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But this internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must be. The varying degrees of internal sovereignty, which the Rulers enjoy, are all subject to the due exercise by the Paramount Power of this responsibility".

In 1926 the murder of a British Indian merchant in Bombay was alleged to have been instigated by the Ruler of Indore, who was therefore offered an impartial Commission of enquiry on the lines suggested by the Montague-Chelmsford Report as the best means of deciding issues of this kind. Declining to stand such an investigation, he was forced to abdicate in favour of his son. In 1933, it was found necessary to secure the absence from his State of the Ruler of Alwar and to place the administration in the hands of a British Officer. The Maharaja has since died during a sojourn to Europe on account of a fatal accident. Prolonged absence from the State was perhaps the only apparent reason for which the Ruler of Dewas (Senior) was relieved from the administration of his State. Numerous cases of such encroachments on the sovereignty of the States in utter violation of treaties, were cited before the Butler Committee. The Butler Committee has met this point in no mistakable terms. They say, "Paramountcy must remain Paramount; it must fulfil its obligations, defining or adapting itself according to the shifting necessities of time and the progressive developments of the States. Nor need the States take alarm at this conclusion, as through paramountcy and paramountcy alone have grown up and flourished those strong benign relations between the Crown and the Princes, on which at all times the States rely. On Paramountcy and paramountcy alone the States rely for their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation."

As regards the value of the existing treaties for defining the unrestricted scope of usages, sufferance and conventions, the Butler Committee say, "The relationship of the paramount power with the States is not merely a contractual relationship, resting on treaties made more than a century ago. It is a living, growing relationship, shaped by circumstances and policy, resting, as Professor Westlake has said, on a mixture of history, theory and modern facts." The report further says, "We cannot agree that usage in itself is in any way sterile. Usage has shaped and developed the relationship between the paramount power and the States from the earliest time, almost in some cases, from the date of the treaties themselves. Usage is recited as a source of jurisdiction in the preamble to the Foreign Jurisdiction Act 1890 (53 and 54 Vict. C 37), and is recognised in decisions of the Judicial Committee of the Privy Council. Usage and sufferance have operated in two main directions. In several cases where no treaty engagement or Sanad exists, usage and sufferance have supplied its place in favour of the States. In all cases usage and sufferance have operated to determine questions on which the treaties engagements and Sanads are silent; They have been a constant factor in the interpretation of these treaties, engagements and Sanads; and they have thus consolidated the position of the Crown as paramount power."

The next and perhaps the most important point is to visualize the position of the States after accession to the Federation with regard to Paramountcy. Section 285 of the Government of India Act 1935 clearly excludes the rights and obligations of the Crown in relation to an Indian State from the purview of the Federation. Thus the sphere of paramountcy is not affected by the new constitution, except of course, in subjects of the Federal Legislative list on which the States have agreed to federate, in which case the legislative and Executive authority of the Federation shall prevail (Section 294 (2)). It will be a sort of modified dyarchy in the realm of Paramountcy.

The Rulers of Indian States have persistently emphasized the desirability of the codification of political practice and for the publication of the case-law relating to the States and the paramount power. This would, in their opinion, make the position clearer and would form precedents for the future working of the Political Department of the Government of India. The States thus

wanted a precise and clear definition of the probable field of Paramountcy before they could agree to the proposals of a Federal union. In this connection their Highnesses wrote to the Viceroy of India in a note dated 27th February, 1935 about the "continuous erosive action from usage, sufference, aquiescence, political practice or ultimate powers of paramountcy undermining from below the essence and substance of the sacred treaties." The note further says, "The Chamber of Princes have from the very outset urged the satisfactory settlement of the claims of Paramountcy to be a condition precedent to the accession of the States to any Federation. Among the essential conditions they had laid down from time to time, the one treating with a definition of Paramountcy has been made a sine qua non to any Federation."

In his telegraphic message to the Viceroy of India dated 14th March, 1935, Sir Samuel Hoare has replied to this claim of the Indian Rulers. He says "The greater part of the field of Paramountcy is untouched by the Bill. The Bill contemplates that certain matters which had previously been determined between the States and the Paramount Power will in future be regulated to the extent that States accede to the Federation by the legislative and executive authority of the Federation. But in other respects (and in all respects as regards non-federating States) Paramountcy will be essentially un-affected by the Bill." He further said in the same letter, "I cannot believe that their Highnesses in expressing their views on this matter, had any intention of questioning the nature of their relationship to the King Emperor. This is a matter which admits of no dispute." This clearly shows that the supremacy of the paramount power is not based only upon treaties and engagements but, as said by Lord Reading, exists independently of them. Lord Curzon was more frank when he said, "The sovereignty of the Crown is everywhere unchallenged."

Whatever the justification or otherwise of the position explained above, it is clear that the treaties, Sanads or engagements are in practice nothing better than mere guides of political conduct subject to the expediency of other relevant circumstances, and also that, to repeat an old phrase, Paramountcy is Paramount, and is alleged to be so with benevolent motive. It has now taken

deep roots and there seems to be no hope that the main theory of Paramountcy will ever be appreciably altered or modified, though in course of time concessions in points of detail may be extended to meet the exigencies of particular occasions.

Paramountcy, it is suggested, might be used as a sanction to enforce the federal obligations of the States. This is designed to preserve the direct relationship between the States and the Crown through the Viceroy. The States at one and the same time seek to exclude Paramountcy altogether from the Federal sphere as regards the exercise of Federal authority and then want to bring it again by a kind of back door as the sanction which is to ensure the observance by the States of their Federal obligations. This is a somewhat difficult position to reconcile. This proposal to re-introduce the Viceroy and the Paramountcy Powers into the Federation by way of sanction does not at all seem to be a lasting idea. Because the vesting of the two offices of Viceroy and Governor-General in the same man is after all an artificial device, unworkable in practice. It must result either in the Viceroy being completely absorbed in the Governor-General or in the separation of the two offices by their assignment to two different persons. Sooner or later, therefore, Paramountcy as the sanction for the enforcement of Federal authority in the States must disappear.

CHAPTER IV

THE FUTURE OF THE STATES

It is a matter of common knowledge that the speedy advance of democratic aspirations for popular institutions must have its natural repurcussions on Indian States and that the sparks of political agitations are bound to fly across from British India into the neighbouring States. The paramount power also, having decided that it is proper that the people of British India should be encouraged to exercise political power, cannot logically maintain the view that the Indian States should deny their subjects the right to advance in political Status.

But at the same time it cannot be denied that the Rulers of Indian States are sufficiently aware of the modern political tendencies. They are keenly desirous of affording as large a freedom to their subjects as possible. His Highness the Maharaja of Bikaner sponsored this view in 1929 when he said, "I look forward to the day when a united India will be enjoying Dominion Status under the aegis of the King Emperor, and the Princes and the States will be in the fullest enjoyment of what is their due—as a solid Federal body, in a position of absolute equality with the Federal provinces of British India." His Highness the Maharaja of Alwar, while addressing Lord Irwin also said the same thing, "Let your name go down to posterity as the Viceroy who championed the cause of a dependency and made it a dominion. We wish British India all cordiality to attain under your guidance her rightful place within the Empire, because her strength means the strength of this union, her prosperity adds to the prosperity of the whole."

While the princes have agreed under certain conditions to accede to the Federation for the sake of a uniform Government for the whole country which might lead to ultimate good for the nation, it must be recognised that the States cannot in the interest of constitutional unity submerge their separate identities. The desire for self-preservation is the natural instinct of mankind and no one should grudge it to the great Princely order. Moreover this simple desire of the States to live is not due to any particularist

or parochial spirit, nor to any selfish desire to protect narrowly conceived material interests, but is solely due to the fact that the Indian Princes believe that as custodians of ancient dynastic traditions, they have the greatest duty of preserving their identity and their peculiar constitutions with their particular fields of endeavour. Under such sentiments, the Indian States would certainly be against any encroachments on their identity and on their rights as independent Rulers, the rights which are inherent in their status and guaranteed and not conferred on them by the subsisting time-honoured treaties. At the same time, the Princes have always sympathised with the patriotic aspirations of the country and have always sponsored the cause of truth and justice. In accordance with constitutional history, they believe that the future Government of India will be successful in proportion as it represents not a new creation substituted for an old one but the natural extension of its past tendencies. Both geographically and economically the Indian States are an integral part of India and as such they must play an important part in the future development of the country, which befits the position, power and dignity of the great Princely order. Indeed, it is ridiculous to deny or even minimise the proud contribution of the Indian Princes for the furtherance of Indian Art, Indian Culture, Indian Music, Indian Literature and Indian Sports.

Some of the Princes trace back their history to dim past across many centuries. Some claim to be born of mythical heroes of Ramayan and Mahabarat and are proud to think that they were once practically the supreme power throughout the length and breadth of India. With such lineage and traditions, they cannot easily forget their glorious past nor can they happily adjust themselves to a position of faded glory and soulless splendour. The people of the States too are equally proud of their Rulers and their States. Democracy and its concomitants have failed to spread their charms on them. Because, democracy in India has not been able to throw up the right sort of political leaders, indeed, the last half a century has seen a great decline in the moral as well as intellectual calibre of the leaders of democracy in the world. Moreover, it has not shown itself possessed of that flexibility and adaptability which is required by the highly dynamic economic and political conditions of the day. It was granted a great opportu-

nity of establishing stable international relations but that opportunity has been wasted. The influence of that great trio—Lenin, Mussolini, and Hitler might be expected to last a number of decades. However, whatever reforms may be desired in the Indian States, the people of those little kingdoms are certainly averse to any idea of wishing to blot their Rulers out of existence. They certainly wish to copy progressive ideas in neighbouring districts, but want to accommodate them according to their own particular needs and requirements. This has nothing to do with their affection and regard for their own Rulers, to whom they are willing to excuse many a fault. They look upon their Rulers as a precious legacy of India's glorious past. In them they see the descendents of the real owners of India who had in times gone by preserved the honour and glory of our mother country at the cost of the blood of the bravest and the tears of the fairest. Not only among the Indian States, but even in British India, there exists a keen desire that the States must live and no attempt to jeopardise their future is likely to meet with public support. It is an essential element of Indian patriotism that nothing should be done to damage the Indian States, though attacks on individual Rulers may sometimes be justified. Indeed, you cannot make India happier if you flout her time-honoured traditions, sweep her social and religious sentiments and tendencies and ignore her inherent national aptitudes.

There is another side of the picture also which need not be overlooked. A section of political opinion in India believes, as stated by Pt Jawaherlal Nehru in his presidential speech at the annual session of the Indian National Congress held at Lucknow in 1936 that, "Being propped up by an alien power Indian States have long survived their day and they have become the strangest anomalies in a changing world". The Indian States People Conference holds the same view. The main object of this conference, seems to be to throw destructive criticism on the administration of Indian States and presumably aspires to become a superfluous suffix to the Indian National Congress inspite of the latter's calculated indifference.

This view has been forcefully contradicted by Lord Willingdon in his valedictory oration at the Princes' banquet in Delhi. He said, "No Sir, the Princes of India are no anachronism, no sur-

viving relic that has no place in the World of to-day; to my mind they are one of the most vital and important influences in the body politic of India at the present time". Lord Linlithgow also took the first opportunity, after his assumption of the high office of the Viceroy of India, for expressing in his momentous broadcasted speech, his profound admiration for the Princes' proud record of constant and undeviating service to the Crown and Empire both in peace and war.

To my mind, the ideology of socialism has callously disregarded the practical requirements of the country at the present time. It has never been sound politics to follow other countries irrespective of the peculiar characteristics of one's country. For every nation the nature of its political constitutions should depend upon the special set of environments under which the nation exists. Geographical conditions, historical traditions, prevailing social and economic circumstances, constitute a whole set of factors that determine politics of a given country at a given time. Then all such factors have got to be adjusted through a long process of error and trial in direct harmony with the needs and sentiments of the country. In this connection Lord Bryce while talking of the English constitution remarks, "The English constitution which we admire as a masterpiece of delicate equipoises and complicated machanism would anywhere but in England be full of difficulties and danger. It works by a body of understandings which no writer can formulate and of habits which centuries have been needed to instil".

Thus it would be wiser for British Indian politicians to cry caution in the race for copying Western Institutions, and try to be less logical and more practical, to build on materials as they exist and not desire to reduce India to one level by filling up the valleys with the hills and mountains. Harold Laski says that the written constitutions work less according to the formulas they announce than by the parallelogram of social forces which give them their living reality. Therefore, the value of the constitution can best be judged by the practical results achieved, and not by technical adherence to any particular form of political constitution. The British India politicians are again labouring under a misapprehension when they believe that the Indian States have slack administrations. In recent years the administration of Indian States have made marvellous improvements and some of the bigger States can

now challenge any British India Province in efficiency. A difference in the method and shape of the administration should not belie any one as to the usefulness of the administration itself. India has been rich in indigenous political principles, one of which is the necessity of Kingship for good Government. In all her vast history no republic is to be found. There is a universally accepted court of Kingship which is a living reality to-day in the minds both of the Princes and their people.

His Highness the late Maharaja of Alwar gave an idea of the future of the Indian States as cherished by the Indian Princes as early as March 1922, at a State banquet in honour of their Excellencies the Viceroy and Countess of Reading, "The question of the Chamber of Princes, and particularly that of the future of the Indian States, is one of such magnitude that I do not feel competent to encompass it in the course of an after-dinner oration. But after all, truths are really simple .... my goal is the United States of India, where every province and every State, working its own destiny in accordance with its own environment, its own tradition, history and religion, will combine together for higher and imperial purposes, each subscribing its little quota of knowledge and experience in a labour of love freely given for a higher and nobler cause."

It is hoped that the future of India will see the evolution of a definite and generous policy of sympathy and mutual trust, which will further strengthen the ties binding the Princes of India to the Crown and will contribute alike to the enhanced contentment, happiness and well-being of the States and to the solidarity, power and righteousness of the Empire.

CHAPTER V

THE FEDERATION

The Government of India Act 1935 has been able to find out a solution for the uniform Government for the whole of India in which the Indian Princes as well as the British Indian autonomous Provinces will be able to work together on a uniform basis for the ultimate good of the country. But it entails a probable contingency of the Indian States being, in the course of time, absolutely submerged in a Federal India. The Princes are rightly apprehensive of the dynastic rights of their families or the territorial integrity of their States being jeopardised. These questions might place insurmountable difficulties in the smooth running of an all-India Federation, although sincere efforts have been made to find out adequate reservations for safeguarding the treaty and other established right of the States, without effecting the recognised principles and essentials of a Federal Government.

The essence of Federation is the distribution of Governmental powers between the centre and the units. But the Indian Federation is a unique experiment amongst Federal constitutions in as much as it will be formed of two entirely different groups of units i. e., the Provinces and the States. The provinces are subjects to the sovereignty of the Parliament of the United Kingdom, whereas the States are themselves sovereign subject to the Crown as Paramount Power. Thus the new constitution can apply to the States only when the States, in the exercise of their sovereignty, accede to the Federation and only for the definite purposes mentioned in the Instrument of Accession.

The division of powers between the centre and the Federating units in a Federal Government has always been, as it now is in this country, a difficult question to decide. It is wrong to suppose that the reservation of a particular item or a limitation thereto by the Federating units is necessarily anti-Federal. Nothing is in principle anti-Federal or pro-Federal, because, the amount of power surrendered to the Central Government or retained by the component States generally depends on the historical background of

individual countries. Differences like these have to be traced ultimately to the influences exercised by political sentiments of a particular country as distinguished from mere logic. Thus the Federation of United States was founded of 13 States, which were in full enjoyment of sovereignty before the Federation. These States were naturally suspicious of another central authority on them and did not favour the idea of conferring many powers on the centre. Consequently in the original constitution of United States the individual States retained a good deal of their sovereignty and the centre had a comparatively limited sphere of activity. The Canadian Provinces, like the Provinces in British India, were not sovereign any time. They were accustomed to the exercise over them of a large amount of control by England. Therefore, there was nothing to obstruct the formation of a strong Central Government in Canada. In German Empire the States were fully independent before 1871. They were in almost all cases ruled by autocratic Princes. Thus the part-States in the German Empire retained in certain respects even more powers than the States in the United States. A study of other Federal systems in Switzerland, Australia and others reveals similar influences being exercised by the peculiar circumstances of each country in the determination of actual division of power between Central and local Governments. Thus it has been found in practice that in the framing of constitutions, wisdom consists more in discovering what is possible and practical in a particular country, than in a blind and obstinate adherence to theoretical principles however sound and logical they might appear to be on paper.

Then again it is increasingly unrealistic to conceive of a Federal division of functions between the Centre and the units in terms of the assignment of subjects as wholes. Each subject has diverse phases appropriate to Central and local attention. The administration of a Federal subject may have repurcussions on other subjects which are the exclusive concern of the Units. The Federal Centre may try to amplify and enlarge the scope of its activities through implied and incidental powers. One should never lose sight of the difference between the powers as laid down in the constitution and those which come to be exercised in practice under the influence of changing usage and convention and of judicial decisions. To illustrate these points, we find in the United States of America

that the specific power to provide for defence has been utilised by the Central Government to fix prices of articles, to stop profiteering and to take under its control matters regarding Railways, Telegraphs and Telephones. The power to establish Post Office has been used to authorise expenditure on highways and to prohibit the grant of postal facilities for the conveyance and sale of lottery tickets. Similarly in Australia things closely parallel to United States have happened and the Federal Centre has usually encroached on domain reserved for the States. An attempt was once made by the Centre, through its power to levy excise duties, to compel the manufacturers of agricultural machinery to pay fair and reasonable wages to their employees, although the States alone had the power to regulate wages. In his famous judgment (Mc Culloch Vs. Maryland) Chief Justice Martial justifies these implied powers of the Central Government and says, "A constitution to contain accurate detail of all the sub-divisions of which its great powers will admit and of all the means by which they may be carried into execution, should partake of the prolixity of a legal code and should scarcely be embraced by a human mind . . . Its nature, therefore, required that its great outlines should be marked, its important objects designated and the minor ingredients which compose these objects be deduced from the nature of the objects themselves."

The Federal constitutions have also been to a great extent altered through the growth of that baffling and extra-legal devise generally known as conventions and usages. This device is responsible for Central Governments in the United States of America, Australia and Canada entering the fields of education, agriculture, roads, forests, fisheries and animal-husbandry which always have been the concern of provincial Governments only. The Hon'ble Judges while interpreting the Federal constitution have, at one time, gone to the extent of suggesting that the Federeal lists of subjects are only illustrative and not exhaustive.

The justification put forward for all such extension of authority into Provincial fields which were unknown or unthought of at the time when the constitutions were framed, is that without it the specific powers conferred by enumeration cannot become effective and complete. There does not seem to be any limit to

which such powers might be extended whenever it suits the Central Government.

A glance over the aforesaid circumstances conclusively shows that the general tendency of the Federal Centres to invade the exclusive spheres of the units has been found to be sufficiently notorious in other countries to put the Indian States on their guard. It is only right and just that the States have been giving very serious thought, and in no hurried manner, to this matter which is full of such knotty problems and grave implications in the face of Federal precedents which do not always depend on written laws. In this connection it is a matter of great satisfaction that through the good offices of the Chamber of Princes, the advice of Mr. J. H. Morgan, an eminent constitutional lawyer of international repute, could be placed at the disposal of the Princes and their Ministers. He has done a signal service by clearing the position of the States in a forceful language with direct reference to the rulings of the Hon'ble Privy Council on similar matters.

Having seen the possible implications of a Federal union for the States, it is yet problematic to assert which way the wind would blow. If the Federating units make a common cause and are able to put a bold front against any encroachments by the Central Government, it would certainly be difficult for the Federal centre to make any uncalled for strides in the exclusive sphere of the units. Mr. A. C. Gain in his book on the Australian constitution refers to such changes in the Federal constitution by the Federal centre. He thinks that, "The only changes that will take place, will be those unconscious changes which (Judges being human) arise by reason of the personality and environment of the Judges. That changing times, with their changing needs and changing outlook will produce changes in the interpretation, is to be expected; but for the reasons I have given these changes will probably be so gradual as almost to be imperceptible." The Princes can also through their representatives in the Federal Legislature, exercise a very healthy influence on All India politics.

Whether the Indian States agree to accede to the All-India Federation or do not do so, the administrations of individual States should be made sufficiently efficient and progressive in the interests both of the Rulers and their subjects. This need not necessarily be the result of pressure from the Paramount Power.

The close association of the Princes with the Federal system and a growing realisation by them of their duties as much to themselves and to their States as to their country, will impel them towards this administrative approximation to the standards of the most advanced members of the Indian Federation.

The best security against outside interference, whether by Paramount Power or Federal Government is an unquestionably efficient standard of local administration. His Excellency Lord Irwin also warned the Princes that "In the last resort and in the fulness of time, I can entertain no doubt that an even more effective security for the States than assurances of good will on the part of the Viceroys or Secretaries of State will in the long run be found to consist in the quality and in the Calibre of their administration." In his note on "Administration and Government" for the Indian States, Lord Irwin has very admirably summarised the essential reforms and principles of administration to be observed in the States. His Excellency wrote, "The establishment of the reign of law which should expressly or tacitly be based upon and represent the general will of the community should be the first object towards which the efforts of Rulers should be directed." Lord Irwin further wrote that, individual liberty and rights of property should be protected; adequate machinery for the adjustment of individual disputes through proper Law Courts should be provided for; and that equality of all before law should be recognised. There should be an efficient and incorrupt Police force and an impartial and efficiently qualified judiciary who are secured in the tenure of their office so long as they do their honest duty. As regards the expenditure of the Rulers, His Excellency says, "From this it follows that the proportion of revenue allotted to the personal expenditure of the Ruler should be as moderate as will suffice to maintain his position and dignity, in order that as large a proportion as possible may be available for the development of the life of the community and of its individual citizens. The civil list of an enlightened modern Ruler is normally fixed at either a definite sum or a definite percentage of the total income of the State."

With regard to the future, after the establishment of an All-India Federation, His Highness the Maharaj Rana Sahib Bahadur of Dholpur while speaking as the Chancellor of the Chamber of

Princes at a momentous meeting of the Princes and Ministers at Bombay said that a conservative party in the Federal Legislature could be had to guard the interest of the Indian States and other land-holders in the country. Such a party is sure to provide a sober and cautious element in the Federal Legislature and will be an effective guarantee against any ill-advised or hasty legislation. The suggestion that such a party will be looked upon with disfavour by the masses ignores the most natural tendencies of the political world and is based on fallacious arguments unwarranted and unsupported by the experience of similar parties in other democratic countries.

GOVERNMENT OF INDIA ACT, 1935.

An Act to make further provision for the Government of India. (2nd August, 1935.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

INTRODUCTORY.

1. This Act may be cited as the Government of India Act, 1935.

2. (*a*) All rights, authority and jurisdiction heretofore belenging to His Majesty the King, Emperor of India, which appertain or are incidental to the Government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty:

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(*b*) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor General, the Governor General in Council, any Governor or any local Government, whether by delegation from His Majesty or otherwise.

The authority of the Crown over India which was formerly exercised through the East India Company and which was declared directly exercisable by the Government of India Act,

1858, is declared to be exercisable by His Majesty except in so far as may otherwise be provided by or under the Act or as directed by His Majesty.

Prior to the passing of the Act, many of the rights vested in the Crown were exercised, some under the authority of a statute, others by delegation from the Crown, by certain ministers and officers. Under the Government of India Act 1915, section 33, for example, it was enacted that the superintendence, direction and control of the civil and military government of India were vested in the Governor General in Council, who was, however, required to pay due obedience to all such orders as he should receive from the Secretary of State. Under the new constitution all such delegated rights are assumed by the Crown and redistributed in such manner as the Act prescribes. The details of this redistribution are set out hereafter.

In some cases this redistribution of rights has resulted in the subjection of certain prerogative rights to control under the Act: for example, the prerogative to determine the extent of the excutive authority of Governors appointed under Letters Patent is restricted by those sections of the Act which prescribe the limits of Federal and Provincial executive authority. It is now clearly established that where the operation of a statute overlaps the exercise of the prerogative, then the prerogative is superseded to the extent of the overlapping. (Attorney-General V.De Keyser's Royal Hotel Limited 1920 A. C. 508) (Eddy and Lawton. P. 11).

The White Paper proposed that the rights of Paramountcy in relation to States should be exercised by the Representative of the Crown in his capacity as Viceroy, on behalf of the Crown. The Joint Committee thought that there must be legal differentiation of functions in the future and that His Majesty may be pleased to constitute two separate offices for this purpose, i. e., the viceroy and the Governor-General. The Committee wrote, "This suggestion involves no departure from the underlined principle of the White Paper that, outside the Federal sphere, the State's relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty's Government." It is important to note that the distinctive title of His Majesty's Representative was introduced in the Bill, and that the word Viceroy does not appear in the Act at all.

3.—(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(*a*) all such powers and duties as are conferred or imposed on him by or under this Act; and

(*b*) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

The powers mentioned in (*b*) include such things as the prerogative of mercy referred to in section 295 (2); the conferment of decorations and honours; the grant of commissions in the Indian Army. There is nothing in section (3) I. (*b*) that enables the Governor-General to be invested with powers in any way altering or conflicting with his constitutional functions under the Act. The Sub-section expressly precludes the assignment to him of any Paramountcy Powers. The J. P. C. report assumes that the ministers will not be entitled to advise the Governor-General in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting the office. There is no interference in this with the principle of responsible government for it is not proposed that His Majesty should be empowered to delegate any powers which are inconsistent with the Act.

Section 3 distinguishes between functions of the Crown in connection with British India and the Federation and functions in all connection with the States. The former are to be exercised by the Governor-General, the latter by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States. Moreover it is under the authority of the Viceroy that the powers in this regard can be exercised by any other officers.

It was suggested by the Round Table Conference that this vital distinction of representation might be emphasized by styling the officer charged with relations with the States, Viceroy, but there were obvious objections to this plan which were duly recognised by the Joint Committee. The term could not well be denied to the Governor-General in his position as head of the Federation; it therefore will remain ceremonial, and the two aspects of the Crown will not thus formally be distinguished. But, though the two positions may be held by the same person, this is not necessarily the case and they may be separated, should in practice it prove difficult for the Governor-General to exercise both sets of functions without inconvenience. Normally, it is suggested, the Governor-General as responsible for the welfare of British India, may be inclined to exercise his functions with some measure of predisposition in favour of his main charge.

The Act clearly recognizes that its term do not exhaust the powers of the Crown, which can exercise in respect of India all prerogative powers in respect of oversea territories save in so far as they are regulated by the Act. Thus the Act leaves untouched the vital prerogatives of the control of foreign affairs, including the right to cede territory, and of making war or peace or declaring neutrality. It recognizes and saves the right of the Crown or by delegation the Governor-General to grant pardons, reprieves, respites or remissions of punishment. It recognizes again the supreme ownership of all land in British India by the Crown, and the resulting doctrine of escheat, and the doctrine under which bona vacantia fall to the Crown, but it regulates in both cases the exercise of the prerogative by assigning the property in question to the Crown for the purposes of the province in which the property is situate. (A. B. Keith. Page 324). The Crown enjoys priority in respect of debts due to the Crown unless precluded by Statute. (Ganpat Pataya's case).

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

This is one of the sections which can be amended without invalidating the accession of the States. It should be noted that Commander-in-Chief is the Commander-in-Chief in India and not in British India only.

PART II
THE FEDERATION OF INDIA

CHAPTER I
ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES

5. (I) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

(*a*) the Provinces hereinafter called Governors' Provinces; and

(*b*) the Indian States which have acceded or may thereafter accede to the Federation; and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(II) The condition referred to is that States—

(*a*) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(*b*) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation.

As recommended in the White Paper and the report of the Joint Select Committee, the new Act provides for the establishment of the Federation of India by the Proclamation of His Majesty, when an address has been presented to him by both Houses of Parliament to that effect. No such Proclamation is, however, to be made until the Rulers of States representing not

less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the States in the Council of State have signified their intention to join the Federation. The J. P. C. report says that the Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis, have been fulfilled.

6. (I) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself his heirs and successors—

(*a*) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(*b*) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession;

Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act:

Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under this section is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

As has already been explained elsewhere the Instrument of Accession is not a Treaty. It is something less than a Treaty in International Law and something more than Instrument at Common Law. It will not be a Treaty such as the British Government would consent to register at Geneva, or to submit to the interpretation of the Hague Court. On the other hand it will be more than any Instrument as between parties at Common Law, because its validity, as distinct from its scope and interpretation, cannot in virtue of the provisons of section 6 (9), be subject to question in the Courts. The Instruments, indeed, represent something quite unique alike in constitutional law and in International Law.

Commenting on the scope and form of the Instrument of Accession the J. P. C. report says that, "It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession; and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he has agreed to recognise as Federal subjects, to be exercised by the Federal authorities brought into existence by the constitution Act; that is to say, the Governor-General, the Federal Lagislature and the Federal Court, but strictly within the limits defined by the Instrument of Accession. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the constitution Act. The list of exclusively Federal subjects is set out in list 1 of Appendix 6 to the White Paper to which we have already drawn attention, and we understand the hope of His

Majesty's Government to be that Rulers too who accede will in general be willing to accept items 1 to 48 of list 1 as Federal subjects." (Para 155). The report further says, "It would, we think be very desirable that the Instrument of Accession should in all cases be in the same form, though we recognise that the list of subjects accepted by the Ruler as Federal may not be identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments. Next, we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation; but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do not need to say that accession of all States to the Federation will be welcome; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable."

During discussions in the House of Commons on this subject Sir Samuel Hoare said, "Certainly we are not going to have any Princes acceding to the Federation with this kind of limited liability system. Perhaps I cannot do better than read to the House the answer I gave upon this subject in my cross-examina-

tion in the Joint Select Committee to one of the 10,000 odd questions that I answered in that Committee. These are my words— 'We contemplate that items 1 to 45—those are the items that now appear in the seventh Schedule and they are the items in the Federal List—of list will be the normal field over which the States will surrender their powers.' I pause at this point to draw the attention of the Committee to the fact that items 1 to 45 cover a very wide field of Government. I pass to the conclusion that I draw from it. First, the States will be invited to accept the first 45 items as Federal subjects. They will of course be free to accept other subjects if they so wish. Secondly, there will and must, be some variation from State to State either in the number of subjects or in the qualifications which they attach to their acceptance. (Mr. Churchill—within the 45?). Within the 45—These variations arriving from the different circumstances of the States and the different Treaty rights which they may wish to preserve. It will, however,—and this is the statement that I emphasise again—rest with the Crown to accept or to reject proposals for Accession . . . . . In order to make it quite clear to Hon'ble members in this Committee that there is no intention whatever of accepting inadequate conditions of Accession, I give once again the undertaking to the Committee that the Instrument of Accession will be issued in the form of a White Paper before the House is asked to consider a proclamation bringing in the Federation, and the House before it pledges itself to Federation, will be in a position to judge whether the accessions have been really effective or not." Regarding two other important points in this connection Sir Samuel Hoare said in the House of Commons, "A question was asked me by my Right Hon'ble friend the Member for Tamworth (Sir A. Steel—Maitland), namely: Do the limitations and conditions that may be asked for apply only to the subjects in List No. 1, or also to the subjects in List No. 3, the concurrent list? The answer is that if, which is not very likely but is possible under the Clause, any Ruler of a State accepted as Federal in his State subject included in the concurrent list, he could apply conditions in regard to his acceptance of that subject in the same way as he can apply conditions to his acceptance of any subject in List No. 1. Does the provision in Sub-section (2) of Clause 6 for supplementary declarations mean that a Ruler having

once declared his acceptance of such and such Federal subjects, subject to such and such qualifications, can by a subsequent instrument withdraw his acceptance of any federal subject or add fresh qualifications or limitations to it? The answer is, 'No'. The intention of Sub-section (2) is to enable a ruler who has accepted, say, 40 subjects as Federal to signify his acceptance of further subjects or, alternatively having accepted a particular item, subject to qualifications, to restrict those qualifications". (Debates, House of Commons, 27 February, 1935.)

The Federal Legislature is given no power over the accession of Indian States for 20 years after the Federation is established. Thereafter, any request for accession can only be sent to his Majesty, when the both Houses of Federal Legislature submit an address praying for the acceptance of such accession. In the opinion of Prof. A. B. Keith, any later accessions after the establishment of the Federation and even before the passing of 20 years, may be weighed by the Crown in the light of feeling in the Legislature, though it has no formal locus standii.

Section 6 (2) empowers the States to specify the limitations to which the power of the Federal Legislature to make laws for the States and the exercise of the executive authority in the States are to be subject. Objections have been raised on behaf of the Government of India that the Instruments cannot deal with matters outside the States and that the Instruments cannot fetter the right of the Federal Legislature to legislate in British India or anywhere outside the States. No legislature could be put in the position where laws clearly within its powers as regards a given area were invalidated because of a limitation laid down by a unit outside that area. The scheme of the Act shows that "Laws for the State" means laws operating in the State and not laws operating outside the State but affecting it. Therefore, it is suggested that such extra-territorial rights will be protected by the Governor-General under section 12 (1) (g) in his discretion. The Princes are not wedded to the form in which such protection is afforded but feel that the protection should be legal. They have, therefore, proposed that a Schedule should be annexed to the Instrument of Accession setting out certain extra-territorial rights and privileges at present enjoyed by the Rulers in British India and thus protect them from hostile legislation in the Federal

legislature. This will, in their opinion, bring such rights under the jurisdiction of the Federal Court. Mr. Morgan doubts the legal efficacy of the proposed schedule. He says, "The power of Legislation of the Federal Legislature in British India is expressed in the Act in the most general terms (Sec. 99 (2)) and within the sphere of Federal subjects, is when exercised in British India exclusive (Section 100 (i)). In view of these sections in the Act itself no clause in the Instrument of Accession and no schedule thereto could operate, in law, to restrict the operation of Federal laws in British India itself and I feel sure that the Privy Council would, therefore, declare such a schedule to be of no effect. To hold otherwise would be contrary to the whole trend of Privy Council decisions as to "the plenary powers" of legislatures created by Act of Parliament. What the "suggested Schedule" proposes to do is to impose a kind of "servitude" on the exercise of such plenary powers and it is, to my mind, inconceivable that the Federal Court and the Privy Council would take any notice of it. It must always be remembered that the Act and the Instrument of Accession will be read together and when there is any conflict between them it is the Act which will prevail. Most of the "extra-territorial" rights and privileges which it is sought to reserve rest on a kind of "dispensing power" conferred on the Governor-General by particular Acts of the Indian Legislature. For example, the privilege of Rulers, whose salute is not less than 19 guns, to import free of duty articles intended for their personal use rests on section 23 of the Sea Customs Act (No. VIII of 1878) whereby the Governor-General is given power to exempt such articles from the payment of duty. The privilege of Rulers to be exempted from payment of income-tax in respect of property in British India rests in the same way upon section 60 of the Income-Tax Act (No. XI of 1922) empowering the Governor-General to exempt "any class of persons" from such payment. In other words, these privileges rest upon British Indian statutes by the existing Central Lagislature. It is, to my mind, quite inconceivable that the Federal Court and the Privy Council would hold that the powers of legislation in British India conferred by the Government of India Act upon the Federal Legislature are less than the corresponding powers of the pre-existing Central Legislature or, what amounts to much the same thing, that an agreement in the form of an Instrument of

Accession, to which the Federal Legislaure is, ex-hypothesi, not a party, could operate to diminish them."

It has also been argued that in case of conflict between the words of the statute and the Instrument of Accession, the words of the latter should prevail as the proviso to section 6 (4) makes the point clear. It says, "And the provisions of this Act shall in relation to the State have effect subject to the provisions of the Instrument."

According to the Government view the States cannot, in their Instrument of Accession, repeat, limit or contradict the statutory provisions of the Act as this is not possible under section 6 (2). Mr. Morgan does not agree with this view. He says that if the above view were correct the first words of the Sub-section should contain the word "Only" also. He thinks that Sub-section 2 could be read along with sub-section 4 which speaks of an Instrument of Accession as being unacceptable if its terms are inconsistent with the scheme of the Act. But a proposal to contract out of the operation of any particular provision of the Act cannot be regarded as inconsistent with the scheme of the Act. The word "Scheme" can surely only mean the general plan or design of the various organs of the Federation. "And to construe the words of sub-section 2 of section 6 as meaning that the States shall only be allowed to specify the limitations recited therein seems to me to offend against a well-known rule as to the interpretation of statutes. That rule is that wherever a particular construction of words would involve hardship or injustice, an alternative construction is to be preferred.

The States Representatives have suggested an additional Clause in the Instrument of Accession to guard against a possible implication that the Legislative powers conferred on the Federation by particular sections of the Act are tacitly accepted by the States. In their opinion section 101 is not a sufficient protection by reason of the fact that it only refers one back to the Instrument and if there is any room for doubt in the Instrument, the defect is not cured by the Act. They also fear that the States are brought in by section 99 (1) unless there is some other provision to exclude them. This additional Clause has been generally pressed by the Committees of Ministers and Princes held for the purpose during the last two years. I am afraid, the arguments put forward for the

insertion of this Clause are rather far-fetched and are born of uncalled for pessimism. The mere fact that the States have been asked to add a new item to the Federal Legislative List in the Instrument of Accession in order to implement section 138 (3), and also to federate on item 53 which corresponds to section 215 of the Act, shows that the Government believes that the Federal Legislature will have no power to make laws for the States on any matter which has not been specifically accepted in the Instrument of Accession. Mr. Morgan's opinion on this point is, "I feel quite certain that section 99 (1) does not enable the Federal Legislature to legislate for federated States in any matter which has not been accepted by that State as a Federal subject. Here again it would do violence to the whole scheme of the Act if one were to interpret section 99 as empowering the Federal Legislature so to legislate. It will be observed that the opening words of Sub-Section 1 of section 99 qualify all that follows with the limitation "subject to the provisions of this Act". This means and must mean, among other things subject to section 101 and to section 6 (2) . . . . Section 107 of the Australian Act also is based on the principle that all powers not expressly conceded by the States to the Federation are reserved to the States. In the case of A. G. to the Commonwealth Vs. Colonial Sugar Refining Company (1914) A. C. 237, the Privy Council has held that the effect of sections 107 of the Australian Act was to vest exclusively in the States the residuum of powers and to place upon the Federal Government the burden of proof that Legislation effecting the liberty of the subject in the State was within its powers.

Sir Samuel Hoare also clearly expressed himself in this connection in the course of a debate in the House of Commons on 27th March, 1935. He said "The whole essence of Federation is that the units surrender definite powers, but beyond that field the Federal Legislature has no power over units at all. That is exactly the position. The Federal Legislature has power over the units to the extent of the Federal field; and in the case of the Indian Princes to the extent that they have surrendered their powers in the Instruments of Accession."

It has been suggested that the first paragraph of the recital to the Instrument of Accession says that, "Proposals for the establishment of a Federation in India have been discussed between

representatives of His Majesty and of the Rulers of the Indian States," and that this recital would operate to make the record of such discussions admissible by the Federal Court and the Privy Council as evidence of the intentions of the parties. This suggestion has no foundation in law, because, the recital of an Instrument can no more be invoked to govern the meaning of the operative clauses of the Instrument than the preamble of a statute can be invoked to govern the interpretation of the enacting words. When the words in the operative clauses of an Instrument are clear and unambiguous they cannot be controlled by any words in the recital.

CHAPTER II

THE FEDERAL EXECUTIVE

THE GOVERNOR-GENERAL

7.—(i) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring function upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian Law on any court, judge or officer, or on any local or another authority.

(ii) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by his Majesty under Part 1 of this Act.

(iii) The provisions of the third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

8.—(i) Subject to the provisions of this Act, the executive authority of the Federation extends—

(*a*) to the matters with respect to which the Federal Legislature has power to make laws;

(*b*) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;

(*c*) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas: Provided that—

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;

(ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State;

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part 1 of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal Law.

The extent of the executive authority of Federation is defined in this section. It is important to appreciate what is meant by the "Executive authority of the Federation". As a matter of general rule the executive authority under the present constitution follows and is conditional upon Legislation. The executive authority of the Federation will extend to administering any law passed by the Legislative authority. As regards the States this is made expressly clear by section 8 (2) which provides that the executive authority of the Ruler continues to be exercisable in the State with respect to matters accepted by the Instrument of Accession as matters of Federal Legislation for the State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law. Until and unless a Federal law applicable to the State has been passed the executive authority of the Ruler remains intact. The executive authority of the State goes with the Legislative

authority unless a specific limitation has been made in the Instrument of Accession. Such Limitations in the Instrument upon the Federal power of Legislation for the State will automatically operate to exclude the Federal executive power from that field. (Section 8 (i) proviso (ii)). Thus if the State reserves the right to mint its own coinage under the limitation mentioned above, the Federation will have no executive power in regard to that coinage. But Limitations on Federal executive authority in the State can also be imposed independently of Legislative limitations.

Under section 8 (i) proviso (ii) of the Act, it is provided that the executive authority of the Federation cannot "save as expressly provided in this Act" extend except to matters in respect to which the Federal Legislature has power to make laws. It is not understood what further executive powers are meant to be exercised by virtue of the words, save as expressly provided in this connection.

Mr. Morgan, while commenting on this subject says, "It is a matter of "common form" in the Constitutional law of the Empire that the executive power is, in the case of an Act of Parliament granting a constitution, co-extensive with the Legislative powers. In other words, if the executive power is not expressly granted, its grant will none the less be held to be implied and implied in "co-extensive terms". But the executive power may be wider than the Legislative power. It is wider in the Government of India Act, as will appear in a moment. Moreover, it must not be forgotten that the Act is, at the moment, incomplete in the sense that it is to be supplemented by Letters Patent, not yet published, constituting the Office of Governor-General. Such Letters Patent will, following the invariable custom, delegate to the Governor-General certain powers not to be found in the Act in other words prerogatives and, in particular, the prerogative of mercy, i. e. the pardoning power. Hitherto there have been no Letters Patent canstituting the Office of Governor-General because in the case of India, unlike that of the Dominions and Colonies where the Office is created by Letters Patent, the office was long ago created by statute. I confine myself therefore to the Executive power as defined in the Act itself. That power is expressed in the Act in wider terms than the legislative sphere-see, for example, Section 8 (1) (*b*) where, after defining it as extending to matters co-extensive with the Legislative powers it is

enlarged to include the raising of Armed Forces. It further extends beyond the legislative sphere of the "Legislature", to "defence" which is described as a "function" of the Governor-General the expenditure on which is (see Section 33 (3)) "charged on the revenues of the Federation and is non-votable and therefore outside the sphere of the Federal Legislature. This complete divorce of wide executive powers from the Legislature i. e. the complete detachment of the exercise of the executive powers from the exercise of the powers of the Federal Legislature, is peculiar to the Act and is not to be found in either of the two Federations within the Empire. The result of it would be that the States, in agreeing to the formula of acceptance by way of "declaration" laid down in Section 6 (1) (*a*), would be accepting certain executive powers over which they, in common with the representatives of a Province in the Federal Legislature, will have no control unless they expressly except, as they are permitted to do by the proviso (ii) to Section 8 (1), the exercise of these powers by their Instruments of Accession. This they must be careful to do if they wish to continue to exercise their control in such matters.

ADMINISTRATION OF FEDERAL AFFAIRS.

9. (1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this subsection shall be construed as preventing the Governor-General from exercising his individual judgment in any case whereby or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the

Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

With regard to the appointment of ministers, the Instrument of Instructions to the Governor-General para VIII runs as follows:—

"In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and member of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers".

Notwithstanding the fact that the State representatives in the Federal Legislature will be nominated, there is nothing to bar such members from being selected as ministers. After pointing out the unanimity of opinion against the inclusion of a non-Parliamentary Minister amongst the Indian delegates to the Round Table Conference, Sir Samuel Hoare, however, told the House of Commons, "It is possible for the Governor-General, if need be, to use one of his nominations for an appointment of this kind. A minister has a period of six months before he need become a member of one or other of the Chambers. In the case of the Federal Legislature if he does not wish to stand for the Assembly he can obtain a nomination for a nominated seat in the Second Chamber. (Debates, House of Commons. 28th February 1935.) It might be added here that during the recent constitutional impasse in the six British Indian Provinces, the majority party (Congress) having refused office, interim Ministries were set up who had no majority behind them in the Legislature. Lord Zetland, Secretary of State for India, in the course of a Debate in the House of Lords on this impasse held that the Interim Ministries were legal irrespective of the fact that they did not belong to the majority party in the Legislature. He said that the Instrument of instructions expect the Governor-General to "use his best endeavours" to select his ministers from the majority party. If such

"endeavours" fail, there is nothing in the instructions to forbid the selection of a ministry from the minority party.

When the Governor-General is not bound by the advice of his ministers he acts either "in his discretion" or in the exercise of his "individual judgment". The difference between these two ways of acting is this:—where the Governor-General is directed by the Act to act "in his discretion" he is not only free to act as he thinks best, but he is not bound to consult his ministers at all. Where he is directed by the Act to exercise his "individual judgment" he must consult his ministers and hear what they advise, but he is not bound to follow their advice when given. (Section 9 (1)). The important point to bear in mind is that whether he acts in his discretion or according to his individual judgment, the Governor-General is no longer the mouth-piece of the responsible Federal Government but subject only to the control of the Government of the United Kingdom.

In moving for the deletion of section 9 sub-section 3 in the House of Commons, Mr. H. Williams observed, "Where there is a relationship between the Sovereign and the ministers here, the Sovereign acts on the advise of his ministers, that is to say, the Sovereign does not act in his discretion and does not exercise his individual judgment so far as constitutional issues are concerned. But under the constitution we are building up, there are three ways, apparently, in which the Governor-General may act. First of all there are cases described in the Measure where he makes his own decision subject only of course, to the provisions of any Instrument of Instructions issued to the Governor-General . . . The next case is where, he asks his ministers for their views, and having obtained them, he then takes his own decision . . . . finally there is the case where, presumably the ministers are appointed as will be seen in sub-section 1 of this Clause, not merely to aid him, but to advise him. In these cases they are entitled to tender advice, as ministers here advise the sovereign, and in that case the Governor-General is bound to take their advise, subject, however, to the provisions of Clause 12, where the question of the special responsibilities of the Governor-General arise. I do not know whether there exists in the world anything quite like this, except to the extent that it may be said to exist partially under the present system of Provincial Government." Replying to this

motion, the Under Secretary of State for India said, "The Sub-section is vital to the scheme on which the powers of the Governor-General and the relation of his ministers is built up. It is essential in these matters of the relationship of the Governor-General to his ministers that the discretion in these matters should rest with the Governor-General himself; otherwise there would be great opportunities for confusion as to whether they fall within a reserved department or within his special responsibilities." (Debates, House of Commons, 20th February, 1935).

10. (i) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(ii) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(iii) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General:

Provided that the salary of a minister shall not be varied during his term of office.

(iv) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(v) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

11. (i) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(ii) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

Defence, ecclesiastical affairs and external affairs though

Federal subjects are reserved to the Governor-General in his discretion, and so is administration of tribal areas. The functions of the Governor-General with respect to defence are mainly his executive functions with regard to the raising and governance of His Majesty's naval, military and air forces in India, and the effect of this section together with sections 43, 44, 108 (i) (c), is to place the entire control of these forces in the hands of the Governor-General in his discretion. But the Governor-General has also a special responsibility for securing that the due discharge of his functions with respect to defence is not prejudiced by any action taken with respect to any other matter [section 12 (i) (h)]. Notwithstanding the fact that the Governor-General's functions with respect to defence are for the raising and control of the armed Forces, there is no doubt that these functions will be taken to include everything bearing upon the defence of India directly or indirectly. The J. P. C. Report says, "No Department of Government can be completely self-contained, and a Department of Defence is no exception to the rule. Its administration does not indeed normally impinge upon the work of other Departments, save in time of war or other grave emergency; but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their cooperation at moments of crisis. It is vital, therefore, that where defence policy is concerned the Department should be able to secure that its views prevail in the event of a difference of opinion. The special responsibility which it is proposed that the Governor-General shall have in respect of any matter affecting the administration of the Departments under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy; and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject, since defence is none the less a Federal subject because reserved. Thus the maintenance of communications especially on mobilisation, is a vital military necessity, and the Governor-General must have power in case of need to issue directions to the Railway Authority, or to require the Minister in charge of communications to take such action as

the Governor-General may deem advisable. In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department, or with regard to such matters as facilities for manoeuvres or the efficiency and well-being of defence personnel stationed in provincial areas, or in times of emergency, with regard to the guarding of railways and bridges, and the like. In frontier areas, and especially in the North West Frontier Provinces, special measures may have to be taken in certain circumstances to control the movement of persons and goods. In all matters of this kind where there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, must rest with the Governor-General, his views must prevail, and he must have adequate means of giving effect to them" (Para 175).

As regards the employment of Indian Troops outside India it has been argued that Indian Troops need not be spared for operations overseas, when considerations of Indian defence are not directly involved. The J. P. C. Report while holding that the Governor-General must decide primarily whether the occasion involves the defence of India in the widest sense and secondly whether he can spare the troops having regard to all the circumstances at the time, conceded that the Indian leaders as represented in the Federal Ministry should be consulted before their fellow countrymen were exposed to the risk of operations in a cause that was not their own. It is also admitted therein that, while the ultimate authority of the Governor-General should not be limited in this matter he should not agree to lend such troops without consultation with the Federal Ministry, when the occasion does not involve the defence of India in the broadest sense. Of course, the Governor-General's decision whether the defence of India is involved or not on a particular occasion will be in his individual judgment. The instruments of instructions to the Governor-General also advise as follows:—

"Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to

an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India." (para XVII).

"And we desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry, and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature." (para XIX).

The Department of external affairs is according to J. P. C. Report, rightly reserved to the Governor-General on account of its intimate connections with the defence policy. It further believes that, "At the present time the Foreign Department of which the Governor-General himself holds the portfolio, is only concerned with the relations between the Government of India on the one hand and Foreign Countries or the frontier Tracts of India on the other, and not with the relations between the Government of India and the Dominions; and we are informed that the expression "External Affairs" is not intended to include latter, a decision with which we concur."

Mr. Cocks while questioning the desirability of keeping "External Affairs" as a reserved subject said in the House of Commons, "The only objection, as far as I know, that has ever been put forward to foreign affairs not being a reserved subject, is that the sphere of defence is reserved, and that it is so intimately connected with the sphere of external affairs that, if the one is reserved, the other must be reserved also. I do not however see that that follows. It is true that the sphere of defence and external affairs are intimately connected, but so are other departments intimately connected with the sphere of defence, that of Finance for example; and although the sphere of defence is a reserved

department, it is not a secret department. The facts are known. The size and numbers of the Army, the striking power of the Military forces, are well known to Ministers and the Minister in charge of foreign affairs would know exactly and precisely how far he can go and in what directions he must not go. He would know exactly the relations between the defence of India and his own sphere. Moreover, the Commissioner in charge of the reserved department of defence would be closely associated and in touch with the foreign Ministers, as the Report says he should be". (Debates, House of Commons, 28th February, 1935).

Prof. Keith in his elaborate comment on this subject says, "Treaties made on behalf of the federation are subject to limitation by the fact that the federation has no power to legislate on subjects included in the Provincial list without the prior assent of the Governor of the Province, or in like matters for the States without the assent of their Rulers. It is of course clear that the Crown can give to the Governor-General full power to make any treaty whatever, but no doubt by constitutional practice the exercise of that power will be restricted to cases within Federal power or cases in which the provinces or states are either willing to extend Federal legislative authority or are themselves prepared to pass any necessary legislation.

In respect of convention arrived at under the procedure of the International Labour Conference it was explained by the Secretary of State to the Labour Office on September 28, 1927, that it was impracticable to ratify conventions if they were to be regarded as binding the Indian States. The Indian legislature had no power to legislate for Indian States, and it would be impracticable to follow the form of procedure laid down in Article 405 in the Treaty of Versailles, 1919. This position has been acquiesced in by the International Labour Conference, but the power of India to apply such conventions more widely will of course arise from the operation of federation. As in the case of the Dominions, ratifications of such conventions are expressed by the Governor-General in Council and not by the Crown.

While it is apparently not contemplated that the States should be pressed to keep abreast of India in such matters as factory legislation, in some matters the necessity of common action is rendered necessary by international considerations. Thus the

Convention on the Regulation of Aerial Navigation of October 13, 1919 was signed for the whole of India. To implement it required State action, and the Standing Committee of the Chamber of Princes discussed the issue from 1923 to 1931, when agreement was reached. The sovereignty of the states over the air is admitted, but they agreed to the Government of India registering aircraft and pilots, investigating accidents, and inspecting aerodromes and factories. The states may declare prohibited areas after consulting the Government of India, and establish customs aerodromes, and reserve local traffic to national aircraft. Hence it has been possible to pass the Indian Aircraft Act, 1934, and to legislate to enable British India to accede to the Convention of October 19, 1929 for the unification of certain rules relating to carriage by air." (See item 3 of the Legislative List also).

As regards "Ecclesiastical Affairs" Sir Samuel Hoare said in reply to objections from the Labour party, "Speaking generally, the position today is that the expenditure of the ecclesiastical departments covers, first, the chaplains for the army and secondly, the chaplains for the services where the services need spiritual ministration. There was the question whether, that being so, it was necessary to have a separate reservation of the ecclesiastical department, whether it could not be regarded as one of the branches either of the reserved defence department, or as part of the army and the money voted for the service. On the whole, we thought it was better to deal with ecclesiastical department as it is dealt with in Bill. We have already made it clear that we did not contemplate the ecclesiastical department going over a wider-field than we have described, namely, speaking generally, ministration for the services and for the army, and in order to show that is our view, in clause 33 sub-section (3)(e) we give the limit of money that can be expended in the department. We say that it shall not exceed 42 lacs of rupees. As far as we can judge the expenditure is like to fall rather than rise." In his alternative draft before the Joint Committee Mr. Attlee has observed, "While we are prepared to accept the proposition that so long as we have an Army in India their spiritual needs should be provided for, we cannot see why this can only or best be achieved by the proposal of the White Paper to retain the ecclesiastical department permanently as a special reserved department of the Government of India. We think it would be very

much better to abolish this department and include religious ministration as an integral part of the army administration. We would go further and propose that as long as we have an army and services in India whose spiritual needs are entirely different from those of the people amongst whom they serve, it would be a gracious act on our part if the necessary expenses were placed on British instead of on Indian revenues. We are in any event entirely opposed to this being included as a reserved department of the Government of India." (Proceedings, Volume I. Part II).

To assist the Governor-General in the administration of reserved departments, he may appoint not more than three Counsellors. They will not be members of the council of ministers responsible to the legislature, but will be the Governor-General's personal advisers in connection with the reserved departments. They will have the right to sit and speak in the Federal legislature, but will not be entitled to vote (Section 21). The instrument of instructions to the Governor-General provides for the joint consultation of the Governor-General with his Counsellors and ministers. The Financial Adviser and the Advocate-General will also not be members of the council of ministers.

(For further discussion see the relevant items of the Federal legislative list).

12.—(i) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(*b*) the safeguarding of the financial stability and credit of the Federal Government;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(*e*) the securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(ii) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

This section in clause (1) (g) mentions the special responsibility of the Governor-General to protect the rights of the Indian States and the rights and dignity of the Rulers thereof. So far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his "Individual judgment" as to the action to be taken. According to section 9 (1), when the Governor-General is directed by the Act to exercise his individual judgment, he must consult his ministers although he is not bound to follow their advice. It is, of course, clear that the Governor-General himself will be the sole judge in all cases to decide whether the question of special responsibility is involved in any case or not. The scope of the special responsibility with regard to Indian States, as embodied in para XV of the Instrument of Instructions to the Governor-General is:—

"Our Governor-General shall construe his special responsibility for the protection of the Rights of any Indian States as requiring him to see that no action shall be taken by his ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the ruler's Instrument of Accession, the Federal Legislature may make laws for his State and subjects."

The J. P. C. Report says that the special responsibility do not set apart a Governmental or departmental sphere of action from which ministers are excluded. In their view, it does no more than indicate a sphere of action in which it will be constitutionally

proper for the Governor-General or Governor, after receiving ministerial advice, to signify his dissent from such advice, and even to act in opposition to it, if in his own unfettered judgment, he is of opinion that the circumstances of the case so required. Again on Page 95, the J. P. C. Report says, "As regards the protection of the rights of any Indian State, we have already expressed the view that the special responsibility only applies where there is a conflict between rights arising under the constitution act and those enjoyed by a State outside the Federal Sphere." The rights to which reference is made in section 12 (1) G must necessarily means rights enjoyed by a State in matters not covered by the Instrument of Accession and which may be prejudiced by the administrative or legislative action of the Federation or of a Province. A White Paper (Cmd 4903) which was issued to explain amendments to be moved on the report stage in the House of Commons stated that the words, "And the rights and dignity of the ruler thereof" were intended to provide the means of securing for the Rulers, recognition of their personal status which has always been accorded to them in British India.

In exercising the aforesaid functions, the Governor-General must follow the general directions laid down in his instrument of instructions. This document is intended to play a considerable part in adapting and developing constitutional practice to meet the growth of political experience in India. It might be used in the course of time to put interpretations upon the scope of Governor-General's discretionary powers, which might to a certain extent diminish the efficacy of the safeguards they now afford.

The section itself (12) (1) (G) is rather meagrely worded. It makes no mention of standing treaties or of the protection by means of military help guaranteed by the Crown to the States. The clause could have been amplified so as to include all the obligations of the Crown. Even as it stands, much reliance is sought to be placed on it and is shown to be an infallible asset for the federating States in times of Constitutional difficulties, in as much as it would always enable the Governor-General to be at their backs. It is problematic, how long the State would care to remain as a hot-house plant capable of development only in the exotic atmosphere—Viceregal protection; especially when the

States feel that they should have a statutory guarantee of their rights and privileges by providing for it in their Instrument Accession. In that case the Federal Court will be able to take cognizance of their rights. Moreover, a declaration by the Federal Court on such points will put an end finally and for ever to all legislations on the point in dispute; while on the other hand, the action of the Governor-General is bound to raise political controversy and repeated attempts may be resorted to for a particular legislation. Besides this, the Governor-General might at times find it difficult to resist a strong ministry or even a persistent legislature who are not able to see eye to eye with the Indian States. As regards judicial sanctions behind the special responsibility, it must be borne in mind that no legal proceedings can be instituted to compell the Governor-General to act in the discharge of his special responsibilities as his discretionary powers are legally unenforceable. It has been held by the High Court of Australia, (The King Vs. the Governor of South Australia 1907) that the courts cannot compel the performance by the Governor of a State of his duty even though it be a duty cast upon him by the Federal Constitution itself. Nor could any Instrument of instructions to the Governor-General with regard to his special responsibility have any judicial recognition or be legally enforceable in a court of law. These instructions to the representative of the Crown are merely political directions and nothing else.

The numerous safeguards embodied in the Act have been very adversely commented upon in the Indian Press. In justifying their inclusion Marquess of Lothian has said, "So far from being obstacles in the way of that successful discharge of the responsibilities of Government by the legislatures, which will make arrival at full Dominion Status rapid and inevitable, ... may prove to be the curve stones and fences which prevent the coach of Parliamentary Government from tumbling into the ditch during its early years."

13.—(i) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General and no further proceedings shall be taken in relation thereto except in pursuance of an address

presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(ii) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

The Instrument of Instructions is, unlike such Instructions in other countries, a statutory document under this section. The J. P. C. Report looked upon the proposal about the Instrument of Instructions to be novel, but approvingly said, "There is, we think, ample justification for this proposal, which has been rightly extended not only to the original instrument but also to any subsequent amendments of it; aud we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development. It is essential that the vital importance of the instrument of instructions in the evolution of the new Indian Constitution should be fully appreciated . . . . . But so grave are the issues involved in the evolution of the Indian Constitution that it would be neither wise nor safe to deny Parliament a voice in the determination of its progressive stages. The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day; but the consequences of any action taken may be so far-reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protest. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest." While moving the second reading of the Bill in the House of Commons on 6th February, 1935, Sir Samuel Hoare said, "Constitutional experts will remember the part the Instrument of Instruction played in other parts of the Empire. In the case of India they are of peculiar importance because, where the situation is as complicated as this situation is, it is essential, that the Viceroy and the Governors should be given clear instructions as to the spirit in which they are to carry out their duties. It is equally important from the point of view of Indians, because in the nature of things this Constitution is a rigid Constitution, and

it can only be amended by future Acts of Parliament . . . . We are proposing to adopt the procedure recommended by the Committee that, for the first time in our history, the Draft Instructions should receive the Parliamentary sanction of both Houses". He added that "they will not be inserted in a Schedule to the Bill, for the obvious reason that, if they were, they would be interpretable by the Federal Court."

In Mr. Morgan's opinion, the Instrument merely instructs the person to whom it is issued how to exercise the prerogatives delegated to him whether by Letters Patent or by the constitution Act. The courts have repeatedly held that they cannot issue a Writ of Mandamus to compel an officer of the Crown to perform a duty owed to the Crown. To hold otherwise would, as Lord Summer put it in a leading case, involve the courts in doing or attempting to do, what no court can ever do, namely undertaking the Government of the country. Mr. Morgan in his concluding remarks adds, "It is hardly necessary for me to say that, in the foregoing observations in this Section on the weakness of the Instrument of Instructions as a safeguard for the protection of the rights of the States, no reflection whatsoever on the good faith of the Government which is responsible for it, is intended. So long as that Government is in power, there can be no reason to doubt that the Instrument will be honourably observed alike in the letter and in the spirit. But a Government, equally with the Parliament to which it is responsible, cannot bind its successors. As things are, therefore, the Instrument will hold good, as a 'safeguard' for just three years and no more. What may happen after the dissolution of the present Parliament is idle to speculate."

14.—(i) In so far as the Governor-General is by or under this Act required to Act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(ii) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner

inconsistent with any Instrument of Instructions issued to him by His Majesty.

15—(i) The Governor-General may appoint a person to be his financial adviser.

(ii) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(iii) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.

(iv) The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

The financial adviser will presumably be an expert and his duties include the giving of advice to the Federal Government on finance generally. He has no right to sit or speak in the Legislature. The principal duty of the financial adviser will be to assist the Governor-General in the discharge of his special responsibility to safeguard the credit of the Federal Government. He will be responsible to the Governor-General only, who will fix his salary which will not be subject to the vote of the legistature.

Mr. D. Grenfell said during the debates in the House of Commons on this point, "It is very difficult to say how far the Federal Government has any real power. If the Governor-General has the right to withdraw from their control a matter of such great importance as the protection of the financial credit of the Government. There is no indication in any way that this is a temporary safeguard". Mr. Cocks was rather more frank and said

that the clause bound the Indian Ministers to be of orthodox views on finance, dictated by the interests of the Bank of England or the Reserved Bank of India. Sir S. Crips also spoke against the proposal regarding the financial adviser and said, "We do take a very strong objection to this appointment of someone whom the Right Hon. Gentleman describes as rather more than a watchdog, that is to say, handing over the whole control of the finances of India, and thereby the control of the Indian ministers, to someone who is not necessarily at all acceptable to those ministers. From our experience of the sort of financial adviser who has gone to different parts of the Empire in the not very distant past, it is probable that he will be the type of person who will try to curtail every social service because of his quite genuine belief in the very orthodox system of capitalist finance. Therefore, you will have a splendid method by which to shut down the whole of the effective work which might otherwise be done by the Indian ministers." (Debates, House of Commons, 28 February, 1935). Sir Tej Bahadur Sapru said on this point, "It is however not enough that theoretically the financial adviser should be an officer without executive power, but what is necessary is, that every care should be taken that the financial adviser does not develop into a rival finance minister. Indian opinion is particularly sensitive on this point, as the experiment of a financial adviser was tried in Egypt, and there had the result, as pointed out by Mr. Young in his book 'Modern Egypt', that the financial adviser became in fact and in substance the finance minister. The British Indian delegation thought that the financial adviser should be designated as Adviser to the entire Government and also that he should be a financier approved by and acceptable to the finance minister.

16.—(i) The Governor-General shall appoint a person, being a person qualified to be appointed a Judge of the Federal Court, to be Advocate-General for the Federation.

(ii) It shall be the duty of the Advocate-General to give advice, to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of the duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.

(iii) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General, may determine.

(iv) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

The Advocate-General corresponds to the Attorney-General in England. He will be the legal adviser of the Federal Government and his services will be available both to the Governor-General personally and to the Council of ministers. He has the right of audience in all courts in British India, and in a case in which Federal interests are concerned, in all courts of Federated States. He can sit and speak but not vote in legislature.

17.—(i) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(ii) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(iii) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(iv) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Genernor-General, any matter under consideration by him which involves or appears to him likely to involve, any special responsibility of the Governor-General.

(v) In the discharge of his functions under sub-sections (ii), (iii) and (iv) of this section the Governor-General shall act in his discretion after consultation with his ministers.

Subsection (v) of this section is an exception to the general rule that the Governor-General when acting in his discretion is not bound to consult his ministers.

CHAPTER III

THE FEDERAL LEGISLATURE

GENERAL

18.—(i) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(ii) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(iii) The said representatives shall be chosen in accordance with the provisions in that behalf containd in the First Schedule to this Act.

(iv) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(v) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

The representatives of the States in the Council of State will be appointed by the Rulers of the States concerned. It was rather difficult to allocate hundred and four seats available for the States as a whole in the Council of State among more than 600 States, Estates and Jagirs scattered throughout the country. After lengthy discussion between the Governor-General and the Rulers, a principle has been enunciated which has been adopted in the Act. This principle is that the allocation of seats among the States in

the Council of State should take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors. Thus Hyderabad which is the largest State in India and whose Ruler is entitled to a salute of 21 guns, is to have five seats in the Council of State. The other 21-gun States, Mysore, Kashmir, Gwalior and Baroda are to have three seats each. The smaller States are to be divided into groups, each State being represented in turn. As regards the Federal House of Assembly, the allocation of seats among the States is to proceed on the principle that the number of seats allotted to each State should be proportionate to its population. Where several States are jointly represented in the Council of State, the Rulers of those States appoint the representative in rotation or by agreement jointly. (First Schedule, Part II, Para 6). In the case of the Federal Assembly, the Rulers of States constituting a group for a single seat, shall appoint their representatives jointly. The representation allowed to each State in the Federal Legislature is set out in the first Schedule Part II of the Act.

It was discussed before the J. P. C. whether any special provision ought to be included in the constitution for prohibiting the State representatives from voting on matters of exclusively British India concern. The British Indian delegation urged that it should be so. Their suggestions were:—

(i) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote; (ii) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final; but (iii) that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibilty; (iv) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign. The J. P. C. Report did not think that these suggestions would in any way meet the case. It says, "Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence; the distinction between formal votes of no confidence and other votes is an artificial and

conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British-India concern, nor could we suppose that it would be in their interests to do so; but they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding their support from a Ministry whose policy they disapprove. In these circumstances we think that the true solution is that there should be no statutory prohibition, but that the matter should be regulated by the common sense of both sides and by the growth of constitutional practice and usage." Sir Akbar Hydari made an important statement in this connection before the Joint Committee in May 1933. He said, "We want to declare that the policy of the States is, as it has always been from the beginning, not to desire intervention in any matter affecting British India alone. At the same time we have also declared that the Indian States have an equal interest, as members of the Federation, in the existence of a strong and stable executive, and therefore, they may have the right to speak and vote, whenever such question arises. If the scheme of the White Paper is carefully studied, then, provided the matter is left to the good sense of the parties, starting with a gentleman's understanding, and developed in practice into a well-understood convention, this twofold object will be attained without endangering either of the principles which we have laid down at the outset." The Nawab of Bhopal also said the same thing at a meeting of the Federal Structure Committee, "May I make the position of Indian States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British-India." A similar statement was made by His Highness the Maharaj of Bikaner at the committee.

A suggestion was made by the States' Ministers to the effect that the Rulers should have the right to recall the State representative in the Federal Legislature any time when such representatives lose the confidence of the Rulers, whether their actual term of appointment has expired or not. Much interest has been exhibited by the States' Ministers during the various discussion on this

point. The suggestion is attacked mainly on the ground that it is undemocratic and that it adversely affects the position, prestige and independence of the representatives. On the other hand it is claimed that the right of nomination should automatically be followed by the right of recall. Prof. A. B. Keith thinks that though the State representatives, are appointed for definite periods of time, the Rulers could insist on the power to demand resignation, whenever they desired to change their nominee. The J. P. C. Report shelved the question with these brief remarks. "A suggestion was brought to our notice that provision should be made in the Constitution Act for the vacation of his seat by a member of the Legislature appointed by the Ruler of a state if called upon to do so by notice in writing from the Ruler. We could not accept this suggestion. We conceive that a State representative, although he is nominated and not elected, holds his seat on precisely the same tenure as an elected representative from British India, and no distinction should be made between the two."

It will not be out of place here to remark that there is a marked tendency amongst British Indian politicians to decry the future representatives of Indian States in the Federal Legislature, as unwanted substitutes of the hitherto nominated class in the Indian Legislature. They look upon the inclusion of Indian States in the new constitution as an unnatural attempt of the British Government to play off the democratic India against its conservative elements and apprehend that the nominees of the Indian Rulers may put anti-national hindrances in the cherished ambition of Indian independence. At this stage it is as impolitic as it is uncharitable to hazard opinions on a matter which is still in the lap of uncertain future, more so, because, the misapprehension referred to are only the creations of their own minds with no sanction in the practical world. As I have said before, the mere fact that the State representatives have been instrumental in running an administration, not on the face of it technically democratic, does not show that they have not the good of the country at heart. Rather it is hoped that the representatives of the States will provide a class of legislators who have had years of intimate experience of the actual administration of the country and have inculcated a wealth of practical knowledge of the intricate problems of human wants and afflictions. Who can deny that such

persons will acqit themselves creditably and will provide a cautious and conservative element in the legislatures and will ensure sobriety and stability in the administration. In the present political situation, such an element in the legislature appears to be indispensable. The desire that the Indian should be in his land what a national is in the most insignificant of the newly constituted states of Europe, is not confined to any particular section or community, but equally felt by the rural peasant and the urban commercial magnate, in short by every community in India.

The Indian States have, during the discussions in the Round Table Conference and other committees, insisted on a bi-cameral legislature. It has been generally accepted that a bi-cameral system of legislatures is an essential feature of the Federal system. Apart from the arguments that have been advanced in unitary States for two chambers of a Legislature, the constitution of a federation affords an additional reason for the bi-cameral system. The units of the Federation agree to enter into the union for certain limited purposes. Their integrity and independence in other matters have to be safeguarded, and an assembly where the interests of States can be represented as States, and where no single unit could dominate either owing to its population or its wealth, has appeared to the federating units the strongest safeguards against their extinction or absorption. In the Indian Federation this feeling has been entertained to some extent by the Provinces, and in an exaggerated form by the Indian States. It has also been urged that it is important at a time when the suffrage is being very largely extended to create a body which will be representative of experience and expert knowledge to act as a stabilizing factor. Further the great majority of the democracies of the world—even those which have recently come into being—have been established on a bi-cameral basis. Experience in the Australian and American Federations seems to show that their existence has been a security against abuse of power and impetuosity on the part of the popular Chamber. A second Chamber makes it possible for the people of Political and administrative experience, who for reasons of age or finance or health are unable to enter the Lower House through the arduous process of electioneering, to be brought into public life and made avail-

able for public office. Indeed many experienced Indian Politicians refuse to be drawn into the doubtful pleasure of election stunts, particularly in view of the unscrupulous methods adopted to dupe the ignorant, yet susceptible electorate. The J. P. C. Report rejected the idea of a uni-cameral Federal Legislature. It says, "We have carefully considered a suggestion that the Federal Legislature should consist of one Chamber only. We recognise that there is much to be said for this proposal also, but, on the whole, we do not feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the Federal Legislature should be bi-cameral. Certainly, a reversal of this view would be distasteful to nearly all, if not to all, the Indian States."

19. (i) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(ii) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(a) Summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(b) prorogue the Chambers;

(c) dissolve the Federal Assembly.

(iii) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

20. (i) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(ii) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient despatch consider any matter which they are required by the message to take into consideration.

21. Every minister, every counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any Committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

22. (i) The Council of State shall, as soon as may be, choose two members of the Council to be respectively President and Deputy President thereof and, so after as the office of President or Deputy President becomes vacant, the Council shall choose another member to be President or Deputy President, as the case may be.

(ii) A member holding office as President or Deputy President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(iii) While the office of President is vacant, the duties of the office shall be performed by the Deputy President or, if the office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(iv) There shall be paid to the President and the Deputy President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.

(v) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "President" and "Deputy

President" respectively, and with the substitution of references to the Assembly for references to the Council:

Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

23.—(i) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(ii) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(iii) If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

PROVISIONS AS TO MEMBERS OF LEGISLATURE.

24. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

25.—(i) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(ii) If a member of either Chamber—

(*a*) becomes, subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor-General resigns his seat, his seat shall thereupon become vacant.

(iii) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

26.—(i) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has, elapsed as may be specified in that behalf by the provisions of that Order or Act;

(e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the

Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification.

Provided that a disqualification under paragraph (f) of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(ii) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(iii) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (i) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection he shall not sit or vote.

(iv) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that—

(*a*) he is a minister either for the Federation or for a Province; or

(*b*) While serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

27. If a person sits or votes as member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

28—(i) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(ii) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(iii) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(iv) Provisions may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do: Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(v) The Provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

Section 28 (4) might empower the Federal Legislature to

force the attendance of State Officers or the production of State documents. A reservation was suggested to guard against any such contingency or at least to make the attendance of State Officers or production of State documents subject to the consent of the Ruler. It has been said that this objection on behalf of the States could be met by a suitable provision in the instrument of instructions to the Governor-General.

29. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Federation applicable in the case of members of the Legislative Assembly of the Indian Legislature.

LEGISLATIVE PROCEDURE.

30.—(1) Subject to the special provisions of this Part of this Act with respect to financial Bill, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

31.—(1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(a) the Bill is rejected by the other Chamber; or

(b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this subsection, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly:

Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso the subsection (i) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers, the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both

Chambers present and voting, it shall be deemed for the puproses of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(*a*) if the Bill having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

32—(1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governal-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed

the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Under section 32 (i) the Governor-General may withhold his assent to any Bill which conflicts with any of his special responsibilities.

PROCEDURE IN FINANCIAL MATTERS.

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation:—

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt:

(*c*) the salaries and allowances of ministers, of counsellors, of the Financial Adviser, of the Advocate-General, of chief Commissioners, and of the staff of the Financial Adviser;

(*d*) the salaries, allowances, and pensions payable to or in

respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

(*e*) Expenditure for the purpose of the discharge by the Governor-General of his function with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to Act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed fourty-two lakhs of rupees, exclusive of pension charges;

(*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

(*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*i*) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

The expenditure charged on the revenues of the Federation is described in section 33 under nine heads. The estimates of this expenditure are not subject to the vote of the Federal Legislature, although the various heads are open to discussion with the exception of the salary of the Governor-General etc. and sums payable out of the revenues of the Federation for expenses incurred in discharging the Paramountcy functions of the Crown (section 34 (1)). It will be observed that most of these heads of expenditure are identical or analogous to payments which would in the United

Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parliament. The principal exception is the salaries of ministers which in the United Kingdom are voted annually. The J. P. C. Report mentions three heads of expenditure which should not be submitted to the vote of the Legislature, namely (1) expenditure for a reserved department, (2) expenditure for the discharge of the functions of the Crown in relation with Indian States and (3) expenditure for the discharge of the duties imposed by the Act on the Secretary of State. The J. P. C. Report explains these items in the following words:—

"The inclusion of the first necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the political department and other matters connected with the rights and obligations of the Paramount Power. We understand the third to refer to such matters as expenditure in connection with the Secretary of State's establishments in London, liabilities incurred by him on contracts or engagements to which he is or will become a party under the provisions of the Constitution Act and payments of compensation to members of the public services under his powers in that behalf."

34.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (*a*) or paragraph (*f*) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein:

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless, the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only

shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand, the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

Lord Rankeillour submitted a memorandum to the joint committee in which he said, "The idea that the Council of State should be empowered, even provisionally, to restore grants struck out by the Legislative Assembly is completely foreign to our constitutional notions as to the functions of an Upper House." Sir Tej Bahadur Sapru also objected to the Upper Chamber exercising equal powers in the matter of supply. He said that, apart from the fact that such powers with the Upper Chamber would be against the British Parliamentary practice, it would amount to over-loading the constitution with conservative influences, and might conceivably have the effect of making the Executive irremovable. Because, according to the present constitution the Lower Chamber itself would consist of 33⅓ per cent of representatives of the Indian States, who would for some time at least not, be popular representatives coming through the open door of election; and the Upper Chamber would consist of two classes of representatives, namely British Indians and representatives of Indian States who would constitute a nominated block.

35—(1) The Governor-General shall authenticate by his signature a schedule specifying—

(*a*) the grants made by the Chambers under the last preceding section;

(*b*) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in

the statement previously laid before the Legislature:

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

If the Chambers rejected or reduced an estimate and if the Governor-General is of opinion that this would affect the due discharge of any of his special responsibility, he is empowered to restore the estimate and it is thereupon included in the authorised expenditure of the Federation.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

37—(1) A Bill or amendment making provision—

(*a*) for imposing or increasing any tax; or

(*b*) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(*c*) for declaring any expenditure to be expenditure charged

on the revenues of the Federation, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

In the opinion of the Joint Parliamentary Committee this provision was introduced in order to secure observance of the well recognised principle of public finance that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues should be made otherwise than on the responsibility of the Executive.

PROCEDURE GENERALLY

38.—(1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business:

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules—

(*a*) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(*b*) for securing the timely completion of financial business;

(*c*) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the

Federal Legislature has power to make Laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(*d*) for prohibiting, save with the consent of the Governor-General in his discretion,—

(*i*) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(*ii*) the discussion, except in relation to estimates of expenditure of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(*iii*) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(*iv*) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be

determined by rules of procedure made under this section, shall preside.

It appears that rules under this head are limited to providing machinery for the carrying out of substantive provisions of the Act such as section 40 and section 108, and cannot cut down the powers of the Federal Legislature. Thus it would not be competent for the Governor-General to make a rule that the Legislature shall not entertain a Bill on a Federal subject affecting the rights of the Indian States. But he can withhold his assent to any Bill under section 32, or he can act under section 44.

It lies with the discretion of the Governor-General to allow or not to allow the discussions of, or asking of questions on the personal conduct of the Ruler of any Indian State. Thus the efficacy of this provision will depend on the personal views of individual Governor-Generals, who might be influenced by the general political atmosphere of the country at any particular time. Prof. A. B. Keith has taken a rather unfortunate view of this provision when he says, "This restriction imposes a serious limitation on the possibilities of exposing scandals, but is part of the price paid for securing State's accession, the Rulers being justly resentful of candid criticism of their medieval methods." It is anything but fair to take these provisions in such light. In a constitution which cautiously guards all possible British interests and abounds in sections for this exclusive purpose, a provision to afford due regard and courtesy to the sovereign Princes of India, is certainly not out of place. It is hoped that this provision will be interpreted in the spirit in which it was made.

39.—All proceedings in the Federal Legislature shall be conducted in the English Language.

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

40.—(1) No discussion shall take place in the Federal Legislature with respect to the conduct of any Judge of the Federal Court or a High Court in the discharge of his duties.

In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federated

State which is a High Court for any of the purposes of Part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

It may be observed that the special responsibility mentioned in section 40 (2) is for the prevention of any grave menace to the peace or tranquillity of India or any part thereof. It has no possible reference to the special responsibility of the Governor-General for the Indian States.

41.—(1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

The intervention of the courts is excluded in matters affecting regularity of procedure and the actions of the officers in carrying out the procedure of the Chambers. This affirms a constitutional principle observed in regard to the Imperial Parliament, but whose application with the Dominions is less clearly established. In 1924, the Calcutta High Court was prepared to forbid putting of a motion (51 Cal. 874 (1924)).

CHAPTER IV

LEGISLATIVE POWERS OF GOVERNOR-GENERAL

42—(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that the Governor-General—

(*a*) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and

(*b*) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;

(*b*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and

(*c*) may be withdrawn at any time by the Governor-General.

(3) If and so far an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43.—(1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

(*b*) may be withdrawn at any time by the Governor-General; and

(*c*) if it is an ordinance extending a previous ordinance for further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the

Legislature explain the circumstances which in his opinion render legislation essential, and either—

(*a*) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's act, the Bill proposed by him to the Chamber either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

The Legislative Powers of the Governor-General in this chapter fall into three classes as embodied in the three preceding sections which must be carefully distinguished.

(i) If at any time when the Federal Legislature is not in session, the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate the ordinances contemplated in section 42. This power belongs to the Federal Government, and the kind of ordinances under this section are referred to in para XXVII of the Instrument of Instructions to the Governor-General.

(ii) The second class of special Legislative Powers belong entirely to the Governor-General in his discretion. Whenever he

is satisfied that circumstances exist which justify an immediate action for the purpose of enabling him to discharge his functions in so far as he is required to act in his discretion or individual judgment, he may promulgate such ordinances as he thinks fit. Such ordinances can remain in force for six months, but may be extended for another period of six month's only. (section 43).

(iii) The third class of special Legislative Powers is also reserved to the Governor-General in his discretion. Under section 44, the Governor-General can himself enact Bills and pass legislations as Governor-General's Act, if he finds it necessary to do so for the discharge of his special responsibilities. He may, thus, forthwith enact permanent legislation in such matters after having explained his action to the Chambers by message or by sending a draft of his proposed Acts.

It is important to note that it is expressly laid down in the Act that if and in so far as Legislation under any of the above mentioned three classes makes any provision which the Federal Legislature would not be competent to enact, the Legislation shall be null and void. Thus these special powers do not enlarge the scope of Federal Legislation, and no ordinance or Governor-General's Act can be made for a State outside the field accepted as the subject matter of Federal Laws in the Instrument of Accession.

CHAPTER V

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

45.—(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(*a*) declare that his function shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(*b*) assume to himself all or any of the powers vested in or exercisable by any Federal Body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(*a*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(*b*) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both

Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the Government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Section 45 of the Government of India Act, 1935 empowers the Governor-General in his discretion to suspend the constitution when he is satisfied that a situation has arisen in which the Government of Federation cannot be carried on in accordance with provisions of the Act and to assume to himself all and any powers vested or exercisable by any Federal Authority by issuing a Proclamation to that effect. The last portion of sub-section (4) of the above section is important from the States' point of view. It says, ". . .The Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendment in this Act without affecting the accession of a State." The latter portion of this clause is rather

vague, and does not clearly empower the States to secede from the federation in the event of constitutional breakdown. The net effect of the Proclamation under this section would be to supercede the Council of Ministers and the Federal Legislature and the Governor-General would virtually constitute the whole Government. At the end of three years these emergency powers must come to an end and either the original constitution is restored or it is amended by Parliament. If the latter course is adopted and the constitution is amended past all recognition, the position of the Indian States in that contingency deserves special consideration.

Prof. A. B. Keith is of opinion that although the Act is silent as to the position in such an event, it should certainly be open to any State to argue that the drastic amendment in the constitution is equivalent to a breach of the Instrument of Accession. He further says that, the amendment made by Parliament must be subject to the restriction of Schedule 2 as regards changes which may be made without affecting the Accession of the States. But no legal means have been provided in the Act under which the States could obtain redress in this respect. Schedule 2 of the Act enumerates the provisions of the Act which may be amended without affecting the Accession of the States. This should mean by direct implication that any provisions not mentioned in Schedule 2 cannot be amended without affecting the Accession. That is to say, the Princes have the right to revive their position in the light of the amended constitution. Section 6 (5) also provides that no amendment unless it is accepted by the Ruler in a supplementary Instrument, shall be construed as extending the functions of any Federal Authority in relation to the State. The States now agree to surrender certain rights to the Federation as contemplated in the Government of India Act, 1935. As soon as these conditions disappear, the power surrendered by the Rulers should automatically revert to them. The doctrine of Rebus-sic-stantibus, i. e. the right of a party to a treaty to denounce it, if the circumstances contemplated by it and under which it was made, become completely changed, should be applied to the Instrument of Accession.

The phrase, "Affecting the Accession of the States" might be taken to mean that if the amendment goes outside the limits prescribed under the second Schedule and modifies any provi-

sions of the Act which are legally excluded from amendment, then the State concerned may declare the Instrument of Accession as null and void. When the original basis on which the Federation was built up has been changed by amendments made by Parliament, the States should be able to say that their Accession has been affected and that their connection with the Federation has ceased to exist. But this question will be outside the jurisdiction of the courts and will have to be settled by mutual negotiations. Under section 204 of the Act it is necessary that the parties to the dispute must be the Federation or any of the Federated States or any of the British India Provinces. A question under section 45 will not be between any of the party, but between the Crown and the State which will be outside the purview of the Federal Court.

The following speeches in the House of Commons may be read with interest in this connection:—

Sir Samuel Hoare:—"The whole object of the second schedule is to set out the part of the Bill (now the Act) which can be amended by Parliament without any question of the Instrument of Accession being compromised. Parliament would be entitled to amend that part of the Bill without any question of secession arising. If, on the other hand, Parliament decides to make a change in the Bill which alters the conditions under which the Princes accede, then, obviously, the contract with the Princes is broken."

The solicitor-General:—"The States will only agree to federate in a structure which, within limits, is definite and certain and obviously we could not completely alter the structure afterwards. The purpose of this clause is to lay down those matters which can be altered without being regarded as fundamental or as impinging on the Instrument of Accession. We think the clause is adequately drafted and is in the best terms for that purpose. If the structure were to be materially altered in fundamental respects, of course the States would clearly have the right to say, "This is not the Federation to which we acceded." One can always contemplate possible difficulties specially in constitutional matters. We have been engaged—quite rightly and I make no complaint about it—in what my Right Hon'ble and learned friend the Attorney-General, the other evening, quoting from Lord Balfours described

as considering the grounds of divorce before entering upon the problems of matrimony. In regard to all these constitutional questions one can always imagine difficult situations arising, but I think as my Hon'ble and learned friend the member for Bridgewater (Mr. Croom-Johnson) said, it is difficult to imagine any Parliament in this country making any fundamental change without thoroughly exploring the matter with the States first, finding out their attitude and arriving at a workable solution having proper regard to the rights of the States under the Instrument of Accession."

Now the Government view on this point seems to be that the instrument of Accession once signed is irrevocable and becomes fully binding on the States making it, without any power to secede from the federation under any circumstances whatsoever. Once Federation is complete, it is said, the only legal means whereby any State could apparently depart from the Federation is by presenting a petition to the Imperial Parliament. In that respect its position might resemble with Western Australia. Mr. Morgan also supports this view when he says, "The States acceding to the Federation have no right of secession. Secession is only possible if the Imperial Parliament, at the request of the States, amends the Act to that effect. This, it may be taken as certain, the Imperial Parliament will, as a matter of constitutional practice, never consent to do. To do so would be to negative the "pledge" of the ultimate grant of Dominion Status made by the Secretary of State during the passage of the Bill through the House of Commons. The Failure of the Petition of the State of Western Australia for secession from the Commonwealth may be regarded as a precedent fatal to any chances of such a petition by the Indian States being granted and implemented by the Imperial Parliament. In that case, of which I can speak with particular knowledge as Counsel for the State of Western Australia, the Judicial Committee not only rejected the Petition but decided that it could not even go into the merits of the case. The ground of their decision was that "the established constitutional conventions of the Empire" put it outside the competence of Parliament to give effect to such a Petition". He further says, "In accordance with instructions of the Chamber of Princes and the views expressed by Their Highnesses of Patiala, Bhopal, and Bikaner

and by the States' Ministers Committee, I and my fellow counsel endeavoured to secure from the Secretary of State in June 1935 an amendment to provide for the "right of secession" in the event of "the breakdown" of the normal authority of the Federation as contemplated by Section 45 of the Act. We failed to secure it. Our draft amendment was decisively rejected."

PART V

LEGISLATIVE POWERS

CHAPTER I

DISTRIBUTION OF POWERS

99. (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(*a*) to British subjects and servants of the Crown in any part of India; or

(*b*) to British subjects who are domiciled in any part of India wherever they may be; or

(*c*) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(*d*) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(*e*) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and person attached to, employed with or following, that force, wherever they may be.

It is argued that this section defines the extent of the Federal Legislative Powers as extending to the Federated States, subject to the Provisions of the Act. The only other provision of the Act which might be relevant in this connection is section 101, which is said to be insufficient in itself to guard against the general power given by section 99 (i) in as much as it refers one back to the

Instrument. As I have explained elsewhere, section 99 (1) cannot and does not invade the sphere not specifically mentioned in the Instrument of Accession. Mr. Morgan was asked as to what the words "for any Federated State" in section 99 (1) could mean. He replied, "Before considering the meaning of the words "for any Federated State" it may be as well to explain the words "for any part of British India" as their meaning will serve to throw light on the words relating to "any Federated State". "In my view the words "for any part" are intended to give the Federal Legislature power to legislate in a particular Federal matter for a part of British India without legislating in that same matter for the whole of British India. In other words, they are meant to enable it to legislate locally. It has been a subject of dispute among constitutional authorities as to whether a Federal Legislature can, in the exercise of its admitted Federal powers, pass a law applying to one Federal unit and not to another. For example, Professor Harrison Moore raises the question without answering it whether the Federal Legislature of Australia could pass a Bankruptcy Act (bankruptcy being admittedly a Federal subject) for one State and enact that it should not apply to the other States. In the same way, doubt would have arisen but for the provisions of Section 99 (1) whether the Federal Legislature of India could legislate on a Federal subject for one Province without legislating at the same time by the same law for the other Provinces. The effect of Section 99 (1) is to provide that it can. It follows, I think, that Section 99 (1) is intended to enable the Federal Legislature to legislate for one Federated State, *i. e.* "any" Federated State, without legislating at the same time by the same law for other Federated States even though the other States have federated in respect of the subject dealt with by the law. Such a power of legislative distinction between one Federated State and another may, obviously, lead to discrimination. For example, a Federal excise tax might be levied, under such "local" legislation, on one State without being levied on other States."

100. (1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

(2) Notwithstanding any thing in the next succeeding subsection, the Federal Legislature and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subjects to the two preceding subsections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

It has been suggested that section 100 (4) and section 104 may be interpreted to enlarge the powers of the Federal Legislature beyond the subjects accepted in the Instrument of Accession. But Mr. Morgan does not think so. He says, "I am bound to say that I think the suggestion fantastic. No court, least of all the Privy Council, could conceivably hold, that this sub section operated to enable the Federal Legislature to legislate for the States. To do so would be to violate all the rules of interpretation followed by the Privy Council, in common with English Courts, as to the construction of statutes. Two of those rules are (i) that, in order to ascertain the meaning of a subsection, one should look at the whole section and (ii) that, in order to ascertain the meaning of a Section of an Act, one should look at the whole Act. Applying the first of these rules, it is quite clear that sub-section (iv) of Section 100 must be read in the light of the object of that section and that object is, quite clearly, to provide for the distribution of legislative power between the Federal Legislature and the Provincial Legislatures and for nothing else. It was necessary to insert sub-section (iv) in order to make provision for the special position of Chief Commissioner's Provinces to which (see the definition in sub-section (iii) of Section (iv) this sub-section clearly refers. Indeed, it would be an almost violent misconstruction of the Section and indeed, of the whole scheme of the Act to assume that it enables the Federal Legislature to legislate for the Federated States in the whole of

Provincial subjects while excluded as it is, from legislating for the Provinces in those matters. Applying the second rule of interpretation, it is clear that such a construction would violate altogether the federal character of the Act and indeed make nonsense of it."

101.—Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

Here it is expressly provided that nothing in the Act should be construed as empowering the Federal Legislature to make laws for a State otherwise than in accordance with its Instrument of Accession and any limitation contained therein. This provision and its effect has been dealt with at length under section 6.

102.—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(*a*) may be revoked by a subsequent Proclamation;

(*b*) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(*c*) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

This special provision for an Emergency Proclamation has no application to the States. It is quite distinct from the Proclamation in case of failure of constitutional machinery. For this power there is no parallel in Canada or Australia, save to the very limited extend that grave Emergency, such as war condition, has been held sufficient in both Dominions to justify the passing of legislation controlling domestic issues which in Peace the Federation could not deal with.

103.—If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

104.—(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

This section has also been referred to under section 100. In the same connection Mr. Morgan further says with regard to the suggestion that this section may enable the Federal Legislature to legislate for the States in residual matters i. e. in matters not to be found either in the Federal List or in the Provincial and concurrent Lists, "It is perfectly clear from the report of the Joint Parliamentary Committee that the provision in this section is intended to refer to the Federal Legislature when legislating for British India, in relation to the Provinces, and for British India alone. But in view of the fact that that Report will not be admissible in the construction of Section 104 by the Courts, I exclude it and confine my observations to the actual words of section 104 and apply to them the ordinary rules of interpretation. Now, clearly, the residual powers of legislation, provided for in this section, refer to such subjects as, in spite of the exhaustiveness of the enumerations, may, at some future date, be found not to have been enumerated in any of the three Lists. In such an event, doubt, involving litigation, would arise as to whether such unenumerated subjects fell within the Federal or Provincial (or Concurrent) sphere, just because the whole field of Legislative activity is not mapped out, by the Act, between the Federal Legislature and the Provinces of British India. But such field is mapped out between the Federal Legislature and the States for the simple reason that there is no State List at all. Therefore no question of residuary powers arises as between the Federal Legislature and the States—the mere fact that the Federal powers alone are enumerated leaves the States in possession of the residuary powers. It is only where, as is the case with the Federal Constitution of Canada and as is the case with the British India sphere of the Indian Federation, there is double enumeration, on a mutually exclusive basis, of Federal powers on the one hand and powers of Federal Units on the other, that difficulties as to where the residuary powers reside could arise. In such a case some provision has to be made, as it is made in Section 91 of the Canadian Constitution, that any residual powers not enumerated in either Lists shall reside somewhere. In Canada it is provided that they should reside with the Federation. In the British India sphere of the proposed Federation they are to reside either with the Federal Legislature or the Provincial Legislatures at the discretion of the Governor-General. This is all that Section

104 provides. It is surely obvious, as a matter of construction, that Section 104 could not possibly refer to the States. If it did, one would expect to find that the Governor-General's express power thereunder to decide whether a "residual" subject shall be entrusted, for purposes of legislation, to "the Federal Legislature or a Provincial Legislature" would be extended, by express words in the section, to a power to decide also whether such residual subjects should be entrusted "to the Federal Legislature or the States". If ever the rule of interpretation "Expressio unius exclusio alterius" applied, it applies here.

106.—(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

In regard to the implementing of treaties and agreements with other countries federal power is limited, for it extends only when the governor of the province affected and the Ruler of any state affected has given prior assent. An Act so passed may be repealed by the Federation, if the treaty ceases to be operative by the Province and State. This limitation, of course, applies only where the subject-matter is not otherwise within federal authority, but the limitation may prove inconvenient. In Canada the extent of power to legislate on provincial topics on this ground is still disputed. In Australia it has never been decided that under the authority as to external affairs the federation may invade the field reserved to the States.

"This Section deals with legislation for the "Implementing" of International Treaties and Agreements. It is at first sight in the nature of a restraint on legislative power in that it provides that the Federal Legislature shall not "by reason only" of Item 3 in the Federal Legislative List have power to make "any" laws implementing such legislation. The words "by reason only" require careful examination. Taken in conjuction with the provisions of sub-section (iii), they narrow considerably the scope of the apparent restraint on the federal power. The result is clearly I think, to enable the Federal Legislature to make any law implementing an International Treaty in relation to any legislative Item which the States have accepted. If, for example, a State accepted Posts and Telegraphs (Item 7), then any Federal Legislation to give effect to an International Treaty such as the Perne Postal Convention will apply to the State without the "previous consent" of the Ruler. The effects of the words "by reason only" and of the sub-section (iii) are therefore to cut down very considerably the requirement of the previous consent of the Ruler to Federal Legislation "implementing" Treaties. The exception created by sub-section (iii) to the rule laid down by sub-section (i) as to the requirement of the "Ruler's consent" is likely in practice, to leave very little of the rule itself. How very far-reaching the power of the Federal Legislature would be to implement Treaties without the Ruler's consent may be illustrated by considering the effect of the exception, contained in sub-section (iii) of Section 106 on the acceptance by the States of Item 24, *i. e.*, "Aircraft and Air Navigation". If a Ruler accepts this Item, he will be bound by any Federal Legislation "implementing" the Convention relating to aerial navigation. Such legislation may, and almost certainly will, go far beyond the scope of the existing voluntary adherence to the general principles of that Convention which the Rulers have given in deference to the wishes expressed by the Government of India, by their acceptance of the Indian Air Navigation Rules, following the Government of India Resolution (No. 150—R/31) of the 8th of August, 1933. How very far the scope of legislation to give effect to the Aerial Navigation Convention may go, and how very deep may be its penetration into the "autonomy" of the States, is forcibly illustrated by the Privy Council's decision in a leading case from Canada, namely, in the Regulation and Control of

Aeronautics in Canada (1932) A. C. 54. In that case the Federal Units *i. e.*, constituent Province or provinces of Canada challenged the validity of a Federal Act and federal regulations designed to "implement" the Federal Government's adhesion to the International Convention relating to the Regulation of Aerial Navigation. The Federal Legislation in question contained, in the words of the Privy Council, "a vast body of regulations," embracing "hundreds of details," each and all of them making it an offence punishable on summary conviction to disobey the regulation. The legislation put it within the exclusive powers of the Federal Government to license "all" pilots, "all" aircraft, and "all" aerodromes irrespective of whether or not the pilots, aircraft, and aerodromes were confined, in their operations, to the internal transport of a Province. None the less, the Privy Council held, that the whole of this Federal Legislation, in spite of its obvious interference with the autonomy of the Provinces in the matter of "property and civil rights", was a valid extension of the federal power. This decision of the Privy Council and with it any federal legislation to give effect to the Aerial Navigation Convention, will become directly applicable to the Federated States on their acceptance of Item 24 and there is nothing in Section 106 to prevent its application. In exactly the same way, any legislation "implementing" the Radio Convention will become applicable to the Federated States on their acceptance of Item 7 in the matter of "broadcasting." Another decision of the Privy Council in another leading case from Canada is of direct application to the Indian States in this respect—I refer to In re. Regulation and Control of Radio Communication in Canada (1932) A. C. 304, in which it was held that Federal Legislation to "implement" International Radio Telegraphic Convention of 1927 was valid." (Morgan).

107.—(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a provincial law with respect to one of the

matters enumerated in the Concurrent Legislative List contains any provision repugnant to the Provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the state shall, to the extent of the repugnancy, be void.

"The effect of the proposals in the White Paper is that, while every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply proprio vigore in that State as they will apply in a Province, a duty identical with that imposed upon Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the States to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as bankruptcy and insolvency, in the Concurrent List." (J. P. C. Report, Para 236.)

"Section 107 presents no difficulties of interpretation and need give rise to no anxieties. It provides for what a Canadian writer, Mr. Justice Clements, has happily called "Federal Paramountcy." By sub-section (3) of the Section a law of a State, which is "repugnant" to a Federal Law extending to that State is, to the extent of its repugnancy, void. The principle runs through all federal constitutions and may be either expressed, as in the case of the Australian Commonwealth Act (see Section 109), or implied as in the case of the British North America Act i. e. the Federal Constitution of Canada. The Canadian Constitution makes no express provision for the application of this rule to its interpretation but the rule has been adopted, as it was bound to be, to meet the case of conflict, by the Privy Council in the case of The Grand Trunk Railway vs. Attorney General for Canada (1907) A. C. 65, following two earlier Canadian cases. The operation of the rule, in the case of India, cannot be better explained than in the words of Lord Dunedin in this case:—

"There can be a domain in which Provincial (i. e. "State") and Dominion (i. e. Federal) legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, and if the field is not clear and in such domain the two legislations meet, then the Dominion legislation must prevail."

Applied to India, this means that the laws of the Federated States and their right to legislate, in respect of any federal Items accepted by them, will continue in operation unless and until the Federal Legislature enacts a law in respect of that Item. If and when the Federal Legislature passes such a law, the State laws in respect of such a matter, will be void to the extent (but not otherwise) of their inconsistencies with the Federal legislation. There is, in fact, under the Act a concurrent power in the States and in the Federation to legislate on Federal Items accepted by the States. It must always be borne in mind, however, that this doctrine of Federal Paramountcy gives such a priority to Federal Legislation over State legislation that a Federal Act may take complete possession by a kind of "effective occupation," of the whole field of State Legislation in regard to a Federal subject. For example, the Federal Legislature might pass Excise Acts so comprehensive in respect of the commodities subjected to the excise duty, and so exhorbitant in the scale of duty imposed as

to make the States' coucurrent power of levying excise duties virtually inoperative. In virtue of the rule of Federal Paramountcy, a federal tax always has priority over a State Tax. There is striking example of the application of the doctrine to Federal and State taxation in the case of Commonwealth of Australia vs. the State of Queensland 20 C. L. R. 148."

In the concurrent sphere the doctrine that a Federal Act supersedes a provincial Act, which is in force in Canada and Australia, cannot be given effect in full, for there would be danger of the Federation unduly tying the hands of the provinces and preventing for instance the variation of legislation on crime necessary to meet a provincial need. Hence, while normally a Federal Act or a central Act on a concurrent subject overrides a provincial Act, if such an Act has been assented to after reservation by the Governor-General, it prevails over prior legislation. The Federal Legislature may vary such an Act, but the prior sanction at discretion of the Governor-General is required for the introduction of such a Bill into the legislature.

CHAPTER II

RESTRICTIONS ON LEGISLATIVE POWERS

108.—(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(*b*) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(*c*) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(*d*) repeals, amends or affects any Act relating to any police force; or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(*f*) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(*g*) affects the grant of relief from any Federal tax or income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(*a*) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(*c*) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

It is advised that this section enables the Governor-General in his discretion to prevent discriminatory taxation. But this section is only confined to the taxation of "Persons". That is to say, it refers to direct taxes only. The distinction between the tax on persons and tax on things is a fundamental distinction in law, constantly made in Privy Council cases on the taxing power in Canada. There is no provision in the Act by which the States are prohibited from discriminating against the Federation or its Provincial Units. The States cannot demand more of the Federation, in the matter of discrimination than they are prepared to give. With regard to this matter the States must content themselves with such protection against discrimination, as is afforded them by clause XV of the Instrument of Instructions to the Governor-General. This protection is, of course, unenforceable in law.

109.—(1) Whereunder any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

(*a*) where the previous sanction or recommendation required was that of the Governor, either by the Governor, or by the Governor-General, or by His Majesty;

(*b*) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty.

110. Nothing in this Act shall be taken—

(*a*) to affect the power of Parliament to legislate for British India, or any part thereof; or

(*b*) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of prize or Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

During the debates in the House of Commons in this connection the Attorney General said, "The Government might take one of three courses. The first course possible is that they should maintain the existing position. That is to say, that the position as it is under Sections 65 and 84 of the Government of India Act would remain and any Act which was repugnant to an Imperial Act of Parliament would be impossible or, if passed, would be void. The second course would be to give the Federal Legislature full and unrestricted powers to do what they like with an Imperial Act

of Parliament; in other words, to give them the full freedom of legislation which is now conferred upon a Dominion like Canada to take advantage of the full use of the Statute of Westminster. The Government do not propose either of these courses. They neither propose to restrict the Indian Legislatures in any way in which they are at present restricted, nor do they propose to give them the full freedom to legislate irrespective of anything that the Imperial Parliament may have done or may do in the future. The Government propose, as the Bill shows to take the middle course. The proposal is to select certain subjects and rule them out of the competence of the Indian Legislature." Thus the matters enumerated in the section are excluded from the jurisdiction of the Federal Legislature. There is another safeguard in the Instrument of Instructions. In Para XXVII the Governor-General is directed not to assent to "any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India".

PART VI

ADMINISTRATIVE RELATIONS

122.—(1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

(2) The reference in subsection (1) of this sections to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian Law applying in that Province.

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.

Under sub-section (3) to this section, the States can claim that the exercise of the Executive Authority of the Federation should be with due regard to the interest of States concerned.

In a Federal system it is absolutely necessary that each Government should in respect of the subjects assigned to it have the power not only to enact appropriate laws but also to enforce them directly or through local agencies.

Under Section 8 (1) of the Government of India Act 1935, the executive power of the Federation extends to the matters with respect to which the Federal Legislature has power to make Laws. The exercise of the executive power of the Federation in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State. (Vide proviso (ii) to section 8 (1). Section (8) sub-section (2) contemplates the exclusion of the executive authority of a Ruler in his State in any Federal matter from the moment the Federal Legislature passes a law in respect of that particular matter.

The Act provides three possible methods of dealing with local administration. Firstly, the administration may, with the Ruler's consent, be entrusted to him or his officers by the Governor-General (Sec. 124 (1)). It is the Federal Government who decide in any given case whether and to what extent local administra-

tion is to be entrusted to the Ruler. It may be entrusted partially or conditionally. But as administration can't be entrusted to a Ruler without his consent, the terms of conditions will be a matter of arrangement with the Federal Government. The second method is the one whereby an Act of the Federal Legislature confers powers and imposes duties upon the State or upon State Officers designated for the purpose by the Ruler (Sec. 124 (3)). This involves that the Federal Act itself will lay down in a binding manner what the State and its Officers are to do in the way of administering the Act. It would be open to the Federal Legislature so to frame the Act that the Officers designated by the Ruler are withdrawn from its control and authority and placed entirely under the authority of the Federal Government. It may well be that this way of dealing with administration may not appeal to a State. It is to be observed that under the second method financial compensation is provided for in the Act.

The third method is by an administration agreement under section 125 of the Act. This section lays down that notwithstanding anything in the Act agreements may, and if provision has been made in the Instrument of Accession shall be made between the Governor-General and the Ruler for the exercise by the Ruler or his Officers of functions in relation to the administration in his State of any law of Federal Legislature, which applies therein. It has been made clear on behalf of the Government that agreements under section 125 will not be made with every State. It will be regarded as a privilege to be accorded sparingly and only when requisite standard of efficiency in State administration is available. Section 125 has no counter-part for the British Indian Portion of the Federation and is designed expressly for the States.

It is contemplated that in the case of subjects for the administration of which in British India there is no Central Staff, and which are accordingly dealt with through a provincial agency, will in a State normally be entrusted to State Agency under the operation of Sec. 124, and that the operation of Sec. 125 will be confined to federal subjects which in British India are dealt with by a Central federal staff and not by a provincial agency, *e. g.* Maritime Customs, Post Offices and Railways.

In the absence of any arrangements made under any of the three methods of administration, it will be open to the Federal

Government to administer a Federal law itself by means of Federal Officials under the direct and exclusive control of the Federal Government, although there is no clear provision for it.

"Inspection" is also part of administration, which has to be carried out through Federal Officials under first and second methods of administration explained above, such inspections would be carried out under the control of the Federal ministers. Under the third method, it would be carried out under the control of the Governor-General in his discretion. In this connection, section 128 is also very important. It provides that the executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein. The limits of this section cannot be precisely defined. It should also be remembered that the Governor General will be acting in his discretion while giving directions to a state under this section. This means that provided the legal conditions are fulfilled, the directions cannot be questioned. Although such powers can be misused, it is hoped that the Governor General will act fairly and reasonably. The vesting of the power to issue directions in the Governor-General in his discretion, does allow of a reasonable business solution being reached in a case of administrative interference of this sort, which might not be possible if the disputes were in the hands of a Court bound by strict legal rules.

It has been argued on behalf of the States that limitations on the executive authority of the Federation can be made under section 6 (2). The Hydrabad memorandum emphasizes that throughout the Round Table Conference the discussion as to the division of power between the Federation and the Units proceeded upon the basis of a clear cut distinction between 'Policy' and 'Legislation' on the one hand and 'Administration' on the other. The constitution Committee of the Chamber of Princes has not thrown much light on this important subject and has only contented itself by reproducing verbatim some of the relevant passages from the Hydrabad Memorandum.

I agree with Mr. Morgan when he says that if the executive authority of the Federation will be thus limited, it would reduce the Federal centre to a mere legislative Union. He further points

out, "There is no clear cut distinction between 'Policy' and 'Administration' and it would be impossible to devise one. The 'Policy' of an Act is inseparable from its execution. Moreover it would be impossible to institute, much more to develop responsible Government in the Federation, if the executive power was reserved to the States."

The whole idea of responsible Government is that a Federal executive should be responsible to the Federal Legislature. If the States were allowed to reserve to themselves the executive power, the Federal Government so far as the States were concerned would be shorn of its responsibility to the Federal Legislature. This does not at all mean that the States will not have a share in the local administration. Rather the local administration will have to be conducted through local officials under Federal control. Such an arrangement makes the Federal Units feel that they are not deprived of their traditional power and prestige. It further avoids the duplication of administrative machinery and is consequently more economical. It also makes possible the administration of most laws by public officers who are familiar with the local needs and peculiarities and who may also be trusted to show sympathy with local prejudices.

123—(1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generaly or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

124.—(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a federated state, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.

This section is said to impair the Sovereignty of the States. It is a section without precedent in any Federal Constitution and may be properly described as "anti-Federal" as it is fundamentally opposed to the Federal principle that Federated States shall be compelled by the Federal Legislature to act as the agents or instruments of the Federal Government. It is a manifest violation of Federal Principles as understood and applied in Australia and Canada, in both of which Federations the Federal Legislature has no such general power. The sub-section in question is sub-section (3). By that sub-section the Federal Legislature is empowered to compel the States to act as its agents by "imposing" duties on the States in respect of any Federal Act extending to a State. The dangers to the Indian States of this innovation cannot be better expressed than in the words of the leading authority on the Federal Constitution of Australia which are as follows:

"The Commonwealth (i. e., the Australian Federation) may not require the organs of the State Governments to act as its agents or instruments. The States have their own functions to fulfil and the admission of a paramount power in the Commonwealth to cast upon State organs the execution of Commonwealth objects without the consent of the States would be, in the end, to destroy the independence of the States."

But this is exactly what Section 124 of the Government of India Act enables the Federal Legislature to do.

125.—(1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

(3) All courts shall take Judicial notice of any agreement made under this section.

It has been argued that this section provides for a statutory agreement between the Governor-General and the States for the exercise, by the Rulers or their Officers of functions in relation to the administration in the States of Federal Laws, and that it is necessary to reserve by means of such agreements the administration of Federal Laws specially in regard to important subjects for the simple reason that the general tendency of Federal constitutions has been to exclude the executive authority of the units in course of time. The fact that the most of the central laws are at present being administered by the Provincial Governments does not warrant the presumption that even under the Federal Constitution a similar procedure will be followed by the Federal Government. The Constitutional position hitherto has been that the Central Government has looked upon the Provincial Governments as its agents. Under the changed circumstances it is very natural that the Federation may in due course develop its own federal machinery and thereby oust the administrative functions exercised by the federated units.

Section 8 (2) and 124 do not provide any guarantee for the adminstration of the Federal laws by the Rulers or their Officers. Section 8 (2) merely permits the continuance of the States'

executive authority until it is excluded by a Federal law; Section 124 makes it discretionary with the Governor-General and the Federation to delegate the executive functions to the officers of the State conditionally or uncounditionally as the case may be. It is obvious that if the States wish to reserve to themselves the administration of Federal laws in regard to any important items they should ensure it by entering into statutory agreements with the Governor-General under section 125.

The contingency of the Federation developing its own executive machinery will be more seriously felt, if a parallel tax-collecting federal agency comes to be set up within the Federated States. Apart from the administrative difficulty, it would create a double sovereignty and mean double allegiance. Under item 45, the State should have their own administrative machinery to collect excise on such items as alcoholic liquors, opiums etc. and if a seperate federal administrative machinery comes into being to collect federal excise duties it would create grave administrative difficulties for the States.

Where the administration is now entirely with a State, it would appear reasonable and within the scheme of the Act that such administration should continue and be accepted by a limitation upon the federal legislative executive authority pursuant to Section 6 (2) of the Act. But, as has been explained under Section 122, this Section will be used very sparingly.

There has been a difference of opinion as to the implications of Section 6 (2) and interpretation has been advanced to say that this Section (6(2)) gives power to the States to make an absolute reservation of executive authority, thus excluding the power of inspection of the Governor-General altogether. Another view is that sections 6 (2) and 125 must be read together. But, whatever the legal interpretation may be, the Government view is that the only acceptable means for reservation of executive authority will be by section 125. In other words as a matter of policy, His Majesty's Government are not prepared to agree to a State reserving absolutely executive authority in such a way as to exclude the power of inspection by the Governor-General. It is thought that there must be some connection between the legislative power and the executive authority. In cases where administration is reserved in a State, the minimum link is provided by the power of

inspection given to the Governor-General under section 125 (2) to enable him to see that the federal policy is duly carried out.

126.—(1) The executive authority of every province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:

Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

127.—The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

This section refers to the acquisition of land in the Provinces only and has no application to the States.

128—(1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State, has in any way failed to fulfil his obligations under the preceding sub-section, the Governor-General acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act.

"This, as we read it, is a statement of the Constitutional duty of every Province in relation to Federal laws, which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part. But, in addition to this general statement of a moral obligation, the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law, and that the manner in which the Provincial Government's executive power and authority is exercised in relation to the administration

of the law is in harmony with the policy of the Federal Government. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation, which, as we have said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself." (J. P. C. Report, Para 219).

BROADCASTING

129.—(1) The Federal Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Federated State such function with respect to broadcasting as may be necessary to enable that Government or Ruler—

(*a*) to construct and use transmitters in the Province or State;

(*b*) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State:

Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed or any such Government or Ruler are lawfully

imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion.

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to Act in his discretion or to exercise his individual judgment.

"The case of broadcasting requires special treatment. Federal control would have been, as in Canada, desirable, but it was felt that it could not be insisted upon, and the Federation may not unreasonably refuse to allow a Province or State to construct or use transmitters, or impose fees for their use or the use of receiving apparatus, but it does not concede any power to regulate use of apparatus provided or authorized by the Federal Government. Functions may be conferred conditionally, iucluding terms of finance, but the matter broadcast by a Province or State Government may not be subjected to conditions save in so far as they appear to be necessary to enable the Governor-General to discharge functions in his discretion or individual judgment, or in respect of peace and tranquillity. Moreover, any issue as to the grant of functions or conditions imposed falls to be decided in his discretion by the Governor-General and not by the court." (Keith)

Broadcasting is a Federal subject, being part of item 7 in the Federal List. But special provisions are made in the body of the Act in order to oblige the Federal Government to entrust to the Units certain functions therein. Such functions will concern both transmitters and receiving apparatus. It is apprehended that the wordings of this section might imply that unless the Federal Government does so entrust the Ruler, he has no right to construct or use broadcasting apparatus in his State. Such rights are inherently vested in the Ruler and need not be thus modified by any Act of Parliament. The section is so worded that it appears to be an attempt on the part of Parliament to assert by implication such jurisdiction with respect to broadcasting. The Rulers have

to, however, observe the international regulations adopted by the Federal Government applicable to all Provinces and States.

INTERFERENCE WITH WATER SUPPLIES

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by—

(*a*) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(*b*) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General.

Under the Act water-supplies is not a Federal subject and is shown in item 19 in the Provincial Legislative List. It is expressly laid down in the Act that the provision regarding water supply shall not apply in relation to any Federated State, the Ruler of which has declared in his Instrument of Accession that the provisions are not to apply to his State. (section 134).

Under the Act of 1919 the Government of India possess what may be called a general right to use and control in the public interest, the water supplies of the country as a whole and each province claims a similiar right over its own water supply. It is a Provincial subject for legislation and administration, but the Central Legislature also has the power to legislate upon it with regard to matters of inter-Provincial concern or affecting the relation of a Province with any other territory.

"The White Paper proposes to give to the Provinces exclusive legislative power in relation to water supplies, irrigation and canal, drainage and embankments, water storage and water power," and reserves no powers of any kind to the Federal Government or Legislature. The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces. The Federal Court would indeed have jurisdiction to

decide any dispute between two Provinces in connection with water supplies, if legal rights or interests were concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence of large tracts depends. We do not think it would be desirable, or indeed feasible to make the control of water supplies a wholly Federal subject, but for the reasons which we have given, it seems to us that complete provincialization might on occasions involve most unfortunate consequences. We suggest, therefore, that where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the intersets of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed ad hoc, and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his dicision and to make recommendations to him. Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit. We think also that the provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested. We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment

of another. With this limitation we believe that the plan would be workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy or with the principle that outside the Federal sphere the States' relations will be exclusively with the Crown." (J. P. C. Report, Para 225 and 226).

131.—(1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper:

Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such

decision and make such order, if any, in the matter as he deems proper.

(6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided, the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section :

Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order.

(8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court.

(9) The functions of the Governor-General under this section shall be exercised by him in his discretion.

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler whereof has declared in

his Instrument of Accession that those provisions are not to apply in relation to his State.

INTER-PROVINCIAL CO-OPERATION.

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

(*a*) inquiring into and advising upon disputes which may have arisen between Provinces;

(*b*) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or

(*c*) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

It is contemplated that apart from the federation there may be advantages in inter-provincial and even state co-operation, just as in Canada and Australia alike the provinces and states confer together on issues of common non-federal concern. Power, therefore, is given to the King in Council to set up an Inter-Provincial Council charged with the duty of inquiring into and advising as to inter-provincial disputes; investigating subjects interesting one or more provinces and the Federation and one or more provinces, and making recommendations in particular for the better co-ordination of policy and action on any such subject. Representatives of the states may be associated in such a Council.

PART VII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I

FINANCE

Distribution of Revenues between the Federation and the Federal Units.

Introductory:—The problem of allocation of resources in a Federal constitution is necessarily one of difficulty as two different authorities, the Government of the Federation and the Government of the unit are simultaneously raising money from the same body of tax payers. In view of the peculiar position of Indian States and British Indian provinces, this subject has entailed a lot of serious thought.

It was estimated that the new overhead charges which would result from the adoption of constitutional changes, that is to say, the additional expenditure for the increase in the size of legislature and electorates and the establishment of the Federal Court, would amount to $\frac{3}{4}$ Crore per annum for Provincial autonomy and another $\frac{3}{4}$ Crore for the establishment of the Federation. Certain other factors will also affect the general budgetary position of the Federation. By the separation of Burma, the revenues of India will suffer probably as much as 3 Crores, less the yeild of any import duties on goods coming from Burma. The sub-ventions to deficit provinces and elimination of cash contribution from Indian States will also adversely affect the Indian Finances. Apart from these extra expenditures there are further difficulties in the assignment of the Federal revenues to the different units. Certain provinces are so situated that the sources of revenue available were never likely to suffice for a proper scale of expenditure, while the centre was in possession of those sources of revenue which were most apt to expand with the

improvement of economic conditions. Industrialized provinces, Bengal in special, pressed for a further share in the proceeds of Income tax. Indian States pressed for a share in the steady increase of receipts from custom duties which their subjects had to pay, but this could be met by Federation, which would give them a constitutional voice in fixing charges. Further the States argued they ought to be exempt from bearing much of the expenditure of the Federation for instances all that incurred in respect of subsidies to deficit provinces. They also pointed out that they had special defence burdens which the provinces did not share and that many state subjects paid income tax on Government securities or as share-holders in companies already taxed. Then there was a controversy on the question whether the service of part of the Pre-federation debt should not fall on British India alone.

The question of a uniform rate of contribution to the Federal Fisc by the Units has been also very much emphasized on behalf of British India, particularly as the representatives of Indian States have all along objected to direct taxation in the States. Lord Salisbury questioned Sir Samuel Hoare on this point in the Joint Committee and generally speaking, the line of argument taken by Sir Samuel Hoare was that by the very fact of their entry into the Federation, and the transference to it of a part of their sovereign or other admitted rights, the States would be making contribution which could not be measured in money. In its concluding remarks, the Davidson Committee report says, "But if every adjustment has been made and every consideration which we have mentioned, has been taken into account, there is still a substantial balance against British India, even this is not the last word. By the very fact of their entry into Federation, the States make a contribution which is not to be weighed in golden scales." Moreover, it must be emphasized that, generally speaking, the taxable capacity of Indian States is on the whole not only lower than the advanced British Indian Provinces, but would be much lower than some of the deficit provinces like Sind and Orissa, because of the relatively greater concentration in British India of centres of human activity. The States have not been paying much to Central Government in the past and no legitimate grievance could be made of this fact by British Indian financiers now. The deficit provinces will be

getting due sub-ventions; but the deficit States will have to carry on without any such help.

The sources of taxation to which the States are expected to contribute are:—

1. Import and export across custom frontiers as defined by the Federal Government. (Item 19 of List 1 of Schedule 7).
2. Duties of customs including export duties. (Item 44).
3. Excise duties (Item 45).
4. Corporation Tax (Item 46).
5. Salt Tax (Item 47).
6. The Surcharges on Income Tax (Section 138 (3)).
7. Certain succession duties etc. (Sec. 137) (Items 56. 57. 58).
8. Taxes on Capital value of the assets of individuals and Companies (Item 55).
9. Fees in respect of any of the matters in the List (Item 59).

The question of 'Customs' has entailed lengthy discussions on account of its being an appreciable asset in the State's Budget. The States have been particular about retaining this right intact and it is hoped that such rights will be protected under section 12 (1). G. by the Governor-General. The J. P. C. Report has in this connection sermonized about the desirablity of freedom of trade in a fully developed Federation. I wonder if this argument of J. P. C. should go far at present when we are living in the age of Imperial Preference and Ottawa-pact. The powers conferred on Federation for excise duties are very vague and limitless. Under section 311 'Goods' are defined to "include all Materials, Commodities and articles". This will clearly include all agricultural commodities as well, and will thus raise a major problem of delimitation between the States' sphere of taxation and the Federal sphere. The Federation may thus wipe out some of Land revenue otherwise accruing to the States. Under section 140, the proceeds of such tax are to be distributed among the units, if an Act of the Federal Legislature so provides. This system of discretionary grants is liable to affect injuriously the independence of the Governments that receive, them and it might lead to undignified higgling between the units for the allocation of amounts.

The States are advised not to federate for Item 54 of List 1 of Schedule 7, (Income-Tax) except for the surcharge thereon as provided for in section 138 (3) of the Act. In this connection, the

States are apprehensive of the meaning of "agricultural income" as defined in Section 2 of the Indian Income Tax Act of 1922. No Bill for such surcharges can be introduced in the Legislature without the previous sanction of the Governor-General, and the latter shall not give consent unless all other practicable means to balance the budget have been exhausted. (Sec. 141 (2)). I wonder, how far this fashionable device of making the Governor-General a "deus ex-machina", whenever inscrutable and insoluble problems arise, will provide a happy solution in practical politics.

As regards taxes on the capital value of the assets of individuals and Companies (Item 55), the States have persistently tried to avoid the imposition of direct taxes, although this stipulation has since been broken into plea of emergency, and the States have agreed to corporation tax and surcharges on Income Tax in the direct form. The Act does not provide for the distribution among units of any portion of the revenue from this particular item. It will, therefore, not at all be unreasonable if the States do not federate for this item.

Duties in respect of succession to property other than agricultural and other duties embodied in Sec. 137 of the Act will from the outset go wholly to the Federating Units and nothing will be retained by the Federal Centre. So that Federation on Item 56, 57 and 58 is apparently harmless, although it must be borne in mind that the States cannot be asked to federate on Items beyond No. 47. The treatment of these items as subjects for Federal Legislation will lead to the natural advantage of having uniform rates of taxation throughout Federation. Section 137 (3) does not contain any provision corresponding to section 138 (3) in regard to emergency surcharges. Revenues from other items in the Federal List (Item 59) should prima facie go to the Federal Government. When the States federate on any item under the seventh schedule, it is difficult to construe the provisions of the Act to enable the State to escape the levy of fees in respect of them. A fee is always leviable on those who deliberately desire some special service from Government, whereas a tax is a compulsory payment. A certain amount of overlapping in respect of fees under Federal heads and provincial item 46 is inevitable and is bound to raise questions in the future.

136. Subject to the following provisions of this chapter with

respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation, and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on Railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature:

Provided that the Federal Legislature may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

The Federation has an exclusive power of levying and collecting the taxes mentioned in this section. The proceeds therefrom, will be credited to the Provinces and the Federated States. The report of the Federal Finance Committee 1932 states in justification of this proposal:—

"One fact which has come out clearly in our investigations is the widespread recognition of the need for uniformity of taxation throughout India in certain fields. It is for this reason that we have already suggested that the Federal Government should retain the power of legislations in regard to certain sources of revenue levied for the benefit of the units. The allocation to the Federal Government of the power of taxation in these fields in no sense implies that the actual collection of the taxes concerned should

necessarily be placed in the hands of Federal officers, and it may be worth noting that the collection of the existing duty on petroleum products in British India is carried out by officers in the service of the Provincial Governments."

The States were not originally expected to federate on these subjects, which were never discussed between the representatives of States and British India on the one hand, and the representatives of His Majesty's Government on the other. It is true that there would be great confusion if these taxes are not levied by some of the units at all, or if they are levied at different rates. It would also be certainly easier for the Federation to levy and to collect some of these taxes, such as terminal taxes or taxes on fares and freights. But the principle of distribution, laid down by the Legislature may not be equitable for some of the States, being based on figures of population only or revenue only or on any other standard. Further the States might make themselves liable to have moneys going to them under such distribution detained as a set-off under section 149 against the value of immunities enjoyed by them.

138.—(1) Taxes on Income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed:

Provided that—

(*a*) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council;

(*b*) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection,

the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

(*a*) in each year of a prescribed period such sum as may be prescribed; and

(*b*) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction:

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

"taxes on income" does not include a corporation tax; "prescribed" means prescribed by His Majesty in Council; and "Federal emoluments" includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income tax is chargeable.

The Provincial claim to income tax has been given added impetus by the attitude of the States in the matter of direct taxation. With the continued rise in the level of the import duties, the States have constantly pressed for the allocation to them of a share in the proceeds of these duties. There is the question of the increased cost of the defence services also. The question was becoming one of formidable difficulties and was recognised as such in the report of the Indian States Committee presided over by Sir Harcourt Butler. "With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though of less formidable complication. It is obviously desirable that, so far as possible, all the Federal Units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the central revenues; the difficulty arises over direct taxation that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Central Government does at present it would be natural to require that the subjects of the federating States should also pay income tax and that the proceeds (or part thereof) should be made available for the Federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind." (J. P. C. Report 247).

Very few of the States have an income tax at present, and even where it exists the rates are mostly much lower than in British India. The imposition of income tax in all the States at British Indian Rates is sure to cause dissatisfaction among the subjects of the States, particularly, as, generally speaking, they are not likely to gain politically from the accession of the States to the Federation. Moreover, the whole of the proceeds of the tax at the outset and ultimately half of it, will be retained by the Federation and the States may not be able to afford this without a diminution of the resources at their disposal for meeting current standards of expenditure. As at the Round Table Conference and before the Joint Committee, the States have consistently made it clear that they will not federate on income Tax, a demand for exclusion of item 54 of the Federal Legislative List from the Instrument of

Accession cannot be misconstrued as an evidence of lack of bona fides.

The details of the financial arrangements relating to the allocation of shares of the income tax were referred to Sir Otto Niemeyer. His report on this point says, "On the balance of the various considerations and risks involved, I recommend that the prescribed percentage of these taxes that shall not form part of the revenues of the Federation [Section 138 (1)] should be 50 per cent. The next question is what amount out of this 50 per cent and for what periods should temporarily be retained by the Federation [Section 138 (2)]. In my opinion a term of about five years would safely cover the period during which the Centre will be consolidating its position after undertaking the initial adjustments; and this is the length of the period that I recommend to be prescribed under section 138 (2) (*a*). It is less easy to prescribe within this first period how much in fact can be surrendered. Obviously conjectures fixing now specific dates in this period might, in the present state of economic flux in the world, in fact prove substantially wide of the mark: and if such a conjecture had to be made so soon in terms of such and such a year, it might perhaps more easily err on the side of caution than on the side of temerity, to the disadvantage of the Provinces. To avoid these inconveniences, it will be preferable to base the amounts to be withheld not so much on specific but entirely conjectural dates, but on the realisation of certain concrete facts.

The power of the Central Government to surrender a share of its revenues will in fact depend largely on the extent to which its main expansive revenue head, viz., Income Tax, progresses, and on the extent to which the Railways move towards attaining a surplus, as contemplated by the Railway Administration at the time of the Percy Committee. It is in my view very desirable to give both the Central Government and the Provinces an interest in securing these results and a share in their advantage if and as soon as they are achieved.

I recommend therefore that, the initial prescribed period under Section 138 (2) (*a*) being five years, the prescribed sum which during that period the Centre may in any year retain out of the assigned 50 per cent. shall be the whole, or such sum as is necessary to bring the proceeds of the 50 per cent. share accruing

to the Centre together with any General Budget receipts from the Railways up to 13 crores, whichever is less."

It might be observed here that the original programme of giving income tax to the Provinces and taking contributions from them was abondoned. It may have been partly under pressure from the Indian States, who insisted that the amount of income-tax, which the Federation would retain permanently, will not be less than 50 per cent. They also desired that the balance going to the Provinces should be so arranged as to leave the Federation in a strong position, and power should be taken for the Governor-General to intercept the balance going to them. Their desire was to shift as much further as possible the moment when they would as units, be called upon to contribute to the Federation.

As regards the surcharges on income-tax leviable under Section 138 (3), Para XXIII of the Instrument of Instructions to the Governor-General provides:—"Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of moneys assigned to the Provinces from taxes on income."

An item has now been proposed to be added to the Instrument of Accession in order to authorise the Federation to levy such surcharges. While these surcharges have been accepted by the States under certain conditions, those conditions have not been defined well. Such a definition is necessary because the States' representatives could not exercise any influence with regard to a large amount of expenditure which is non-votable under sections 33 (3) and 34 (1). It is therefore necessary to get the conditions under which surcharges would fall on the States, more clearly defined.

It has been made clear by Sir Samuel Hoare in his reply to questions 8314-8317 before the Joint Committee that, generally speaking, any Instrument of Accession which was designed to

contract out of the provisions in regard to emergency surcharges, would not be acceptable to the Crown.

There is an existing sur-tax of $12\frac{1}{2}$ per cent. and it is not sure whether it will be taken as a sur-tax by the Federation also or it will be merged in the basic-tax. If it is so merged, it might be made applicable to the Indian States. The Act does not fix any limit to the percentage of the sur-tax, nor does it fix the maximum rate for the basic-tax.

The Rulers of the Indian States also apprehend about their liability for the income tax surcharges.

139. (1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.

(3) Where the Rluer of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.

If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.

"The White Paper proposes to treat specially the taxes on the income or capital of companies. We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies. It is proposed that the

Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution. We appreciate the desire of the States for this measure of elasticity and feel bound to accept it, though we must observe that the details of the arrangement with the States seem likely to be complex and that the adoption of the alternative procedure is economically undesirable." (J. P. C. Report, Para 256.)

Corporation Tax as defined in section 311 (2) means, "Any tax on such of the income of companies as does not represent agricultural income being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application." Corporation Tax is an expanding revenue. Indian States have shown rapid progress in this respect and have taken to the modern form of Joint Stock Business particularly after the Great War.

140.—(1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding sub-section, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

"It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces, accept the principle of

internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose them is specifically limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion, would have to be brought to bear upon the States." (J. P. C. Report, Para 264).

The Government of India has retained to the Federation the Power of levying excise duties on goods which are imported in large quantity and which may hereafter be produced in India to the prejudice of the import revenue, on the ground that Federation must have a stable revenue and that it must have the power to levy the counter-vailing excise duties. Under the circumstances the States' claim for retaining the excise duties will be probably unacceptable to His Majesty. Such Federal Excises should not, however, be made applicable to the dairy agricultural produce or products of village and hand industries.

Under the Federation there would be no surplus available for distribution out of these duties as the Federal Budget forecast

based on the budget for the year 1936-37 discloses a deficit to the extent of more than three Crores as compared to the Percy Committee's forecast, inspite of the absorption of all the excise revenue mentioned above.

A suggestion has been made that the existing Salt agreements between the Government of India and the States should be preserved. The Davidson Committee has recommended that all these existing agreements, arrangements and rights should be converted into "Immunities" costing about Rs. 46 lacs a year. Section 147 (6) of the Act makes the necessary provision; and unless there is no cash contribution to be remitted under Section 147 (1) or Payment to be made under Section 147 (2) or unless the Crown holds that any of the agreements should not be taken into account for the purpose of Chapter I of Part VII of the Act, all of them will come under the provisions of the chapter regarding "privilege or Immunity". The States cannot introduce any limitation on the subject in its Instrument of Accession, as the matter will not come within the scope of Federal Legislation.

It is important to note that the Courts will not be able to interfere in such questions as the "principles of distribution" referred to in this Section, or even in the determination of what constitutes "financial stability" in the case of proviso 2 to Section 138 (2). There is no means known to the law for compelling a Government or a Legislature to carry out financial obligations. Similar sections in the Australian Act have proved to be unenforceable and have been disregarded by the Federal Government.

141.—(1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion—

(2) The Governor-General shall not give his sanction to the

introduction of any Bill or the moving of any amendment imposing, in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression "Tax or duty in which Provinces are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

It should be observed that the ultimate effect of the words "practicable economies" in section 141 (2) may be entirely negatived by increases in non-votable expenditure deliberately designed to frustrate the intention of the Act. This is what has happened in Australia and indeed, any majority in the Federal Legislature will be helpless to resist such increases. The States as well as the Provinces will have no control over them. In the opinion of Mr. Manu Subedar, "The language of Section 141 (2) merely imposes the obligation on the Governor-General to see that 'all practicable economies and all practicable measures for increasing the proceeds of Federal taxation would not result in the balancing of the Federal budget without resort to borrowing'. This is not enough. If the Financial Adviser to the Governor-General agrees with the Finance Minister of the Federation that, if some more money is not raised, there would be a deficit, the Governor-General would, in all probability, use his discretion and give his consent. But, the States stipulated that a state of 'emergency' must exist. The reservation, which I would recommend in this case, must take the form of a definition of emergency, to be given effect to through an amendment to the Instrument of Instructions. Such a definition would involve a difficult and critical condition arising out of a sudden and unexpected failure of revenue from normal sources, or a sudden and unexpected expenditure, which could not properly be defrayed from current resources and for meeting which new taxes must be raised."

143.—(1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

144.—(1) In the foregoing provisions of this chapter "net proceed" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

THE CROWN AND THE STATES.

145.—There shall be paid to His Majesty by the Federation in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise,

for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

146.—All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

147.—(1) Subject to the provisions of subsection (3) of this section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the Accession of State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance,

there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first-mentioned case, on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section—

(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period

referred to in subsection (2) of the said section, whichever first occurs; and

(b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and

(c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means—

(a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;

(b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;

(c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say—

(a) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

(b) sums receivable in respect of the abandonment or surrender

of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(d) privileges in respect of free service stamps or the free carriage of State mails on government business;

(e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(f) the right to issue currency notes,

not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

The Joint Select Committee pointed out that the entry of the States into the Federation involved some complicated financial adjustments, mainly in respect of tributes and ceded territories. These adjustments were examined in the report of the Indian States Enquiry Committee 1932 (C. md. 4103) and they are dealt with under this section. J. P. C. Report endorsed the main principles on which the report of the Indian States Enquiry Committee is based, particularly the gradual abolition over a period of years of any contributions paid by a State to the Crown which is in excess of the value of the immunity which it enjoyed. At the present day, paramountcy payments are made by a number of Indian States to the Crown. This section provides that liquidation of such paramountcy payments will take place gradually over a period of years. But no such remission will start until the Provinces have begun to receive a share of income tax. The remissions will be complete at the end of twenty years, but may occur earlier

if the Provinces begin to receive the whole share of income tax before the expiration of twenty years.

Wherever, after Accession any State retains any "privilege or immunity" the value of the right so retained will be set-off against the contributions payable by the States, and the States will only receive the remission to the extent that the value of that contribution exceeds the value set upon the privilege or immunity" Thus a State which at present makes an annual contribution of Rs. 2 lakhs to the Crown, but possesses a right to free service stamps valued at Rs. $\frac{1}{2}$ lakh which it retains on entry into Federation, would only benefit from remission of its contribution to the amount of Rs. 2 lakhs minus Rs. $\frac{1}{2}$ lakh = Rs. $1\frac{1}{2}$ lakhs.

Power is, however, given to His Majesty to permit "privileges and immunities" not to be taken into account in calculating the remission to which a State is entitled; and this doubtless will afford opportunities for negotiation between the State and the Government of India at the time of the State's accession.

The Instrument of Accession must contain full particulars both of Paramountcy payments and "privileges and immunities" and must also make provision for periodical valuation of those "privileges and immunities" which have a fluctuating value (Section 147).

The whole question of cash contributions and privileges and immunities enjoyed by the State as well as the question of ceded territories has been extensively dealt with by the Davidson Committee in their Report and it will be seen from the tenor of the report that all sacrifices made by the States for the benefit of any of the Imperial departments would be considered as contributions made by the State towards the federal fisc while all rights, privileges or facilities enjoyed by the State at the cost of any of the Imperial departments would be treated as privileges or immunities enjoyed by the State at the cost of the federal fisc. Whatever contribution is made by the State to any of the Federal departments in respect of any of the items under the federal list would be contribution which the Indian States would be entitled to cancellation, while any privileges enjoyed in respect of any departments at the cost of the federal resources in respect of federal items would be a privilege or immunity enjoyed by the State.

There is a very important note at the bottom of subsection 6 of

section 147 whereby it is ruled that privileges or immunities not claimed prior to accession are likely to be deemed as surrendered by the State upon accession to federation. Hence it is important to put forward all claims in respect of such privileges or contributions prior to federation.

Cash contributions have been defined in subsection 5 of this section and includes amounts payable by the State in respect of suzerainty or for protection of the State or in respect of subsidiary forces or in respect of state troops attached to His Majesty's Forces or in respect of local military forces of Police etc., etc., and periodical contributions to the Imperial fisc. The question therefore arises whether contributions made by the State under other heads are entitled to be treated as contributions or the same will have to be adjusted in other ways. Consensus of legal opinion on the point is that any contribution other than the contributions mentioned in subsection 5 whether cash or otherwise shall have to be adjusted either by compensation or by agreement and will not be considered for being ranked under section 147. This raises an important issue in respect of contributions made by the States to the following departments, viz: Railway, Posts and Telegraphs, Imperial Roads, Imperial Canals, Social Service departments like research institutes, agricultural farms, hospitals, educational institutions, etc., etc., and this question will have to be adjusted prior to Federation. (D. B. Tilak).

148.—Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

149.—Whereunder the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year or any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account shall, if and in so far as the Act of the Federal Legislature under which the pay-

ment or distribution is made so provides, be set-off against the payment or distribution.

In view of the claim of the States that cash contributions being feudal, must be abolished as between units of the Federation and the Federal Centre, it has been argued on behalf of the Government that the units must also be ready to give up all benefits derived from heads which have been classified as Federal in the Act. The Central budget could not give up all that the States are contributing, while the States also could not give up revenue derived from heads now made federal. Contribution will therefore continue where they do not exceed the value of privileges.

This section has reference to the distribution to the Federated States concerned of a share of Salt duties, excise duties and export duties. For example, if a State had exercised the right to tax Salt, and had before its joining the Federation surrendered the right for a cash payment from British Indian revenues, then if in connection with the States joining the Federation it has not been found possible to get rid of the privilege because no remission of contribution or payment has been made to the State, the Privilege could be taken as a set-off against the payment to the States of a share of Salt duty under section 140 of the Act.

MISCELLANEOUS FINANCIAL PROVISIONS.

150.—(1) No burden shall be imposed on revenues of the Federation or the Provinces except for the purposes of India or some part of India.

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

154.—Property vested in His Majesty for purposes of the Government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State:

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such

tax, shall, so long, as that tax continues, continue to be liable, or to be treated liable, as thereto.

155.—(1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India:

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof:

(b) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

164.—The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

The Act does not expressly interfere with the right of the States to borrow in whatever market they may think fit, but in practice the present Paramountcy rule prohibiting States from borrowing outside their own territories except with the consent of the Paramount power is likely to continue to be enforced. After the establishment of Federation, however, the Federal Government will be empowered to make loans to Federated States, or to give guarantees, within any limits fixed by an Act of the Federal Legislature, in respect of loans raised by a Federated State; and to impose such conditions as it thinks fit upon any such loan or guarantee.

The only difference between this section and the corresponding provision for a Province contained in section 163 (2) is that the latter provides that "any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation", while no such provision appears in section 164. Probably the reason for the difference is that the Act imposes certain restrictions on the borrowing powers of Provinces which it does not impose in the case of Federated States.

CHAPTER III

PROPERTY, CONTRACTS, LIABILITIES AND SUITS

172.—(1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the government of India shall as from that date—

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise;

(b) in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act; and

(c) in the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the

commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.

(2) Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma.

(3) The lands and buildings vested in His Majesty by virtue of this section for the purpose of His Majesty's Government in the United Kingdom shall be under the management of the Commissioners of Works, and, subject to the provisions of subsection (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.

(4) The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves:

Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General, the provisions of subsection (2) of this section shall not apply and, notwithstanding anything in subsection (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.

(5) Any question which may arise within the five years next following the commencement of Part III of this Act, as to the purposes for which any lands or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.

An existing Government of India Post Office in a State would become a Federal Post Office and it might pass to the Federation under section 172 (1) (b) for the purposes mentioned therein.

174.—Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia

for want of a rightful owner, shall, if it is properly situate in a Province, vest in His Majesty for the purposes of the Government of that Province, and shall in any other case vest in His Majesty for the purposes of the Government of the Federation:

Provided that any property which at the date when it accrued to His Majesty was in the possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the Government of the Federation or for the purposes of the Government of that Province.

It has been suggested that a reservation might be made in the Instrument of Accession to the effect that property in a State of which there is no rightful owner will under the laws of the State by escheat or lapse or as bona vacantia accrue to the Ruler of the State.

175.—(1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the Government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts:

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or the Governor, as the case may be.

(2) All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with Indian States, as the case may be, shall vest in His Majesty for those purposes.

(3) Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or

Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Compulsory acquisition of land is not a Federal subject, but is a Provincial subject (Provincial Legislative List Item 9) where land in a Province is required for Federal purposes a special procedure is provided for by section 127 of the Act. This procedure does not apply where the Federation wants to acquire land in a State. Section 175 provides that the Executive Authority of the Federation shall extend to purchase or acquisition of property on behalf of His Majesty for the purposes of the Government of the Federation and to the making of contracts. It appears that where the Federation requires land in a State it will have to proceed under this section and purchase or lease the land by agreement. This procedure will, it seems, be applicable even in the case of land in a State required for a Federal Railway.

178.—(1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the Federation and of all the Provinces.

(2) All enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as aforesaid shall, in relation to those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary.

(3) No deduction in respect of taxation imposed by or under any existing Indian Law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or

interest of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, have fallen to be made by the Secretary of State in Council.

(4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of and shall be secured upon the revenues of, the corresponding Province under this Act.

(5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section.

(6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railways three per cent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden.

180.—(1) Any contract made before the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such

a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State.

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this section and any costs or expenses incurred by him, in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary by virtue of any such proceedings shall be paid or credited to the Federation.

PART VIII

THE FEDERAL RAILWAY AUTHORITY

It will be seen that the Act provides for the control of railways by an Authority removed from Politics which is itself subject to Federal Legislation but is only subject to the control of the Federal Ministers as regards safety and to some extent as regards general policy. The functions of the Authority therefore extend beyond the field of management and embrace also the Governmental functions which would otherwise be exercisable by a Minister. In so removing the control of railways from the field of politics, the Act has adopted and extended an idea which is becoming familiar in England that a National commercial undertaking is best managed by a quasi-independent body whose action is not subject to day-to-day political control. The Central Electricity Board, the Port of London Authority, the London Passenger Transport Board are examples of such quasi-independent bodies in England.

The note written by the Counsel for Western India States on the subject of railways will be read with interest:—

"Before dealing with the content of the Item it is desirable to mention certain provisions affecting the States' Railways which are to be found in the body of the Act. By Section 193 (1) a duty is imposed upon the Federal Railway Authority and upon every Federated State to exercise their powers in relation to the Railways with which they are respectively concerned so as to afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from those Railways including the receiving, forwarding and delivering of through traffic at through rates, and so as to secure that there shall be between one Railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition. An independent Railway Tribunal, whose constitution is provided for in Section 196, is to be the judge as to whether these conditions are fulfilled. Section 194 enables a State aggrieved by an executive order of the Federal Railway Authority relating to interchange of

traffic, rates, fares or terminal charges, to complain to the Railway Tribunal. By Section 195 provision is made that, where the Federal Railway Authority or a Federated State desires to construct a new Railway or to alter an old Railway, notice must be given and objections may be lodged on the ground that the proposal will result in unfair or uneconomic competition. The final decision as to whether or not the new Railway is to be built or the alteration of the old Railway is to be made will rest with the Railway Tribunal.

It is to be observed that the provisions of Section 195 will take the place of the present right claimed by the Crown under Paramountcy, and referred to in para VIII of Government's Resolution No. 202—1 of 1923 to grant or withhold permission for a State to open a new Railway. Under Federation the State will merely have to satisfy the Railway Tribunal that the Railway is reasonably necessary. There is no reason to suppose that, in all proper cases, the right to proceed with the construction of new lines will not be granted.

It should further be noted that both Sections 193 and 195 are applicable to Minor Railways.

1. Turning now to the Item in the Legislative List, it is necessary to distinguish between a "Federal Railway," an "Indian State Railway" and a "Minor Railway", for the legislative powers of the Federation differ in each case.

(a) A Railway within a State will be a Federal Railway unless it is both owned by the State and operated either by the State or on behalf of the State by someone other than the Government of India. The fact that a State has a financial interest in and representation on the Advisory Board of a Railway constructed by Government under the provisions of para V of Government Resolution No. 202—1 of 1923 will not prevent such a Railway being a Federal Railway for the purposes of the Act. Thus the main trunk lines of India will be Federal Railways, and as such their control will be vested in the Federation completely, although the actual management will devolve upon the Federal Railway Authority whose constitution (set out in Schedule VIII of the Act) is intended to ensure that it will be primarily a non-political body.

(b) The majority of Railways in States in Western India will

be Indian State Railways. Over these Railways the Federal Legislature will have power to make laws for safety, maximum and minimum rates and fares, station and service terminal charges, intercharge of traffic and the liability of the Railway administration as carriers. It is to be anticipated that, following the normal practice in Railway legislation, and indeed the whole scheme of Part VIII of the Act, considerable latitude will be left to the executive discretion, either of the Railway administrations in the States or of the Federal Railway Authority, as the case may be, in regard to all these matters except safety and the responsibility of Railway administrations as carriers. States will have a remedy against unreasonable exercise of such executive discretion by the Federal Railway Authority, by complaint to the Railway Tribunal under Section 194 of the Act. With respect to safety, the Federation may under Section 181 (3) and probably will undertake direct control to the exclusion of the Federal Railway Authority of at least a part of the subject; and with respect to responsibility as carriers the intention is to permit of a uniform law throughout India governing standard conditions of carriage applicable to the carriage passengers and goods.

(c) Minor Railways are defined as Railways which are wholly situated in one unit and do not form part of a continuous line of communication with a Federal Railway. Over such Railways, Item 20 gives the minimum of powers to the Federation viz., power to make regulations as to safety and to the liability of the administration as carriers of goods and passengers.

It should be noted that neither Part VIII of the Act nor Item 20 deal with the question of the Crown's extra-territorial jurisdiction over the Railway areas of States. That jurisdiction relates not so much to the working of the Railways as to the criminal and civil law to be applied in the Railway areas and the constitution of extra-territorial Courts to deal with offences committed and disputes arising in such areas. It has been generally assumed that, in principle, the continued existence of extra-territorial jurisdiction of this character is incompatible with the Federal idea and that, where practical considerations permit, the Government of India will be prepared to retrocede jurisdiction to the States. In Western India, however, there are so many breaks of jurisdiction on lines of State Railways that the Government of India may take

the view that jurisdiction cannot be retroceded in the Railway areas at any rate of the Majority of States. Jurisdiction, if retained by the Crown, will not, by virtue of the Act, become exercisable by the Federation. It will continue to be a Crown jurisdiction and will be administered by the Viceroy through the political Department. The Railway jurisdiction of the Crown within the States includes the right to police the Railway areas. This point is discussed in relation to Item 39.

(2) Accession for Item 20 should, on the whole, prove advantageous to States as compared with the present position. The following points should, however, be noted:—(a) acceptance of the Item without reservation might enable a Federal Railway to be built in the State if the proposal for construction is approved by the Railway Tribunal under Section 195; (b) Section 181 (2) would empower the Federal Railway Authority to carry on in a State undertakings ancillary to Federal Railways, such as hotels, omnibus services, etc., (c) the power of the Federal Legislature under Item 20 to provide for "station and service terminal charges" might possibly be used so as to fix these charges in such a way as to interfere with the working of or even to discriminate against State Railways as compared with Federal Railways; (d) the expression "the responsibility of the administrations of Railways as carriers of goods and passengers" in the item might possibly be given an extended meaning; (e) the Act defines a Railway as including a tramway not wholly within a municipal area.

(3) With regard to point (a) above it is to be remembered that, although in principle the Ruler's consent may not be required for the construction of a Federal Railway in the State, a Railway cannot be built without the acquisition of land and if, as proposed elsewhere in this Memorandum, a general limitation is inserted in the Instrument of Accession making it clear that the Federation will not have power to acquire land compulsorily in the State, no reservation with regard to construction is necessary in practice.

With regard to point (b) above, a limitation might be suggested providing that no such undertaking as is referred to in Section 181 (2) shall be carried on the State without the Ruler's consent. This would be a limitation upon the executive authority of the Federation conferred by the sub-section.

Point (e) above should be borne in mind by States which have tramways.

Some of the provisions in the Act, it will be observed, correspond to the conditions laid down in Government Resolution 202—I of 1923, which, it is understood, the States desire to preserve. Certain of the conditions laid down in that Resolution cannot, however, be preserved in their present form after Federation. These include paragraph V of the Resolution which provides that States will be permitted to invest funds in future Government Railways passing through their own territories or through territories adjacent to the States and will be represented where possible on the Advisory Board of the Railway so constructed. In as much, however, as a Federal Railway, as pointed out above, could not in practice be constructed in a State without its consent, it will be open to the State to make a suitable agreement with the Railway Authority as a term of granting the necessary lands to construct a Federal Railway in its territory. The agreement could be made subject to the interpretation of the Federal Court under Section 204 (I) (a) (iii). There is nothing in the Act to prevent States investing money in Railway in British India outside their territories, although it is difficult to see how States could be guaranteed such right after Federation. Where a State has an agreement giving it a right to representation on the advisory board of an existing Federal Railway or a financial interest in such Railway the question should be considered of preserving the agreement by a limitation in the Instrument of Accession.

Finally, it should be observed that accession for Item 20, with or without limitation, may well have considerable effect upon agreements concluded between the States themselves as to the running of their Railways. It will be desirable for a State which is a party to any such agreement to scrutinise its terms with great care and, where necessary, to enter into new agreements with neighbouring States in order to preserve those rights which are not directly affected by accession for this Item and to substitute other provisions where the provisions of an existing agreement will be rendered unsuitable by reason of the accession of one or both of the States."

The claim of the States that the cession of jurisdiction over Railway lands was not intended to include fiscal jurisdiction, has

been accepted in the Davidson Committee Report. It says, "It has been represented by the States generally that the cession of jurisdiction over railway lands has involved fiscal consequences which were not contemplated at the time of cession. The Government of India has expressly disclaimed any right to exploit these areas for fiscal purposes, and, though this announcement may not yet have been translated into practice in every case, we assume that the grievance will be remedied before very long. The loss of revenue which the States attribute to the system under which jurisdiction is exercised by the Government of India falls under three heads, (a) immunity from State income tax (where levied) of persons residing and profits accruing within railway limits; (b) immunity from State Customs tariff, especially in the case of trading cencerns, such as co-operative stores, whereby these are able to compete on unfair terms with concerns outside the railway boundary; (c) loss of revenue from excisable articles sold within railway limits. (Para 179).

As regards (a), State income tax, we consider that the States which levy income tax have a grievance which should in equity be removed, and our recommendations are as follows:—

Railway Employees resident in State territory should be subject to State income tax, if any. This would involve some amendment of the existing income tax law in British India, but we note that distribution of income tax in British India on the basis of residence has been recommended in paragraphs 69—70 of the Report of Eustace Percy's Federal Finance Committee.

Federal Railways should undoubtedly be exempt from tax in the same way as all federal property.

Railway Companies should pay State income tax, where such tax exists, on the basis of the proportion of their mileage in State territory to their whole system or on such other system of appointment as may be found practicable and equitable. (Para 180).

As regards (b), State customs tariff, we understand that facilities have already been accorded by the railway authorities to certain States to collect their customs duties within railway lands on goods imported for consumption as distinct from goods in transit. We consider that steps should be taken to remove the grievance of other States in this matter. (Para 181).

As regards (c), State excise, we understand that some States are already paid the excise fees at British rates on articles sold in railway restaurants within their limits. We see no reason why this practice should not be applied generally, but we recommend that the rates of excise charged and paid to each State should be those in force in that State. (Para 182).

181.—(1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").

(2) The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings:

Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.

So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.

182.—(1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion

appoint a member of the Authority to be the President thereof.

(2) Subject as aforesaid, the provisions of the Eight Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income tax:

Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or amending the provisions of the said Schedule.

183.—(1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor-General in his discretion shall be final.

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in

regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

184.—(1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor-General.

185—(1) Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued:

Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

(3) The Authority may make working agreements with, and

carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

To guard against the compulsory acquisition of land as contemplated under this section, the States have suggested the necessity of an additional clause in the Instrument of Accession which should provide for the compulsory acquisition of land after payment of just compensation or on such terms as may be mutually settled. Such a clause will provide against the possibility of the Federation claiming the right of 'eminent domain'. Although the Act does not appear to give any power for compulsory acquisition of land in the States to the Federation, yet the Federal Court might hold that inherent Authority vested in the Federation to acquire land for the purpose of carrying out its functions. (Also see Item 10 of the Federal Legislative List).

187.—(1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined.

For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority.

Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

193.—(1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding, and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.

194.—If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

195.—(1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe or any pro-

posal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal Railway or a State Railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

196.—(1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2) The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period:

Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the

Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

In this connection the Joint Committee state: "We attach special importance to the arbitration procedure . . . as means of settling disputes on administrative issues between the Railway Authority and the Administrations of Railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway

traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, its right to do so should be subject to appeal by the Railway Authority to the same tribunal."

198.—If and in so far as His majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

PART IX

THE JUDICATURE

CHAPTER I

THE FEDERAL COURT.

Introductory:—It is an essential feature of a Federal Constitution that there should be a Judicial body, independent both of the Federal Legislature and Executive and of the Government of the Units. In the words of J. P. C. report, it is at once the interpreter and guardian of the constitution and a tribunal for the determination of disputes between the constituent units of the Federation.

This function is fulfilled by the Federal Court of India, whose constitution and functions are dealt with in part IX of the New Act. The Federal Judges are appointed directly by the Crown and the Federal Government has no say in it. They can serve upto the age of 65. The Federal Court will normally sit at Delhi or at other places which are duly notified by the Chief Justice. The draft orders-in-council fixes the salary of the Chief Justice at Rs. 7000/- and of the Judges at Rs. 5500/- per mensem. It is worth notice that the Chief Justice of the Supreme Court of the United States gets only about Rs. 3000/- per mensem. The Federal Court will begin to function from 1st October 1937.

The jurisdiction of the Federal Court as embodied in the New Act, is of the following kinds:

(1) Original Jurisdiction.

(2) Appellate jurisdiction in appeals from British India and Federated States.

(3) Advisory jurisdiction.

(4) A right of appeal lies to the Federal Court from the decisions of the Railway Tribunal.

(5) Besides this the Federal Legislature can pass an Act for making the Federal Court a final court of appeal from High Courts in British India in ordinary non-constitutional cases in substitution for the present right of Appeal to the Privy Council. Section 215 of the New Act further

empowers the Federal Legislature to confer upon the Federal Court supplementary powers for the purpose of enabling the court to exercise ancillary powers not inconsistent with the Act. The section appears to be linked to item 53 of the Federal Legislative List. It is further laid down that All Authorities Civil and Judicial throughout the Federation shall act in aid of the Federal Court. (Section 210). In the course of discussion on this point, as to whether the section involves the attendance of Rulers of States or Governors of Provinces the Attorney General explained in the House of Commons that under this section the Federal Court is to have powers to make the orders, which any High Court in British India would have powers to make in regard to the territory over which it has jurisdiction, (Debates 1st April 1935).

The exclusive original jurisdiction of the Federal Court extends to disputes between any two or more of the following parties viz. the Federation, any of the provinces and any of the Federated States. With regard to the subject matter of the dispute, which falls within the original jurisdiction, it must involve any question (whether of law or fact) on which the existence or extent of a legal right depends, moreover when a State is a party to the dispute, it must concern the interpretation of the Act or of an order in Council or the extent of the Legislative or Executive Authority of the Federation; or the dispute must arise under an agreement made with a State regarding Administration of any Federal Law, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for the State. No dispute is justiciable by the Federal Court if it arises under an agreement expressly excluding such jurisdiction. The judgments of the Federal Court on the original side shall be declaratory judgments only. The jurisdiction thus conferred resemble in some respects that conferred on the Federal High Court of Australia by section 75 of the Australia constitution.

It has been questioned whether the word agreements referred to in section 204 (Proviso) means to include agreements with any State or with Federated States only. Mr. Morgan's view on the point is quite clear. He holds that it refers to agreements of Federated States only because the Substantive Sub-section (1) refers only to

Federated States and the proviso cannot be isolated from the sub-section which it is meant to qualify. The "agreements" referred to in Proviso (iii) relate to non-federal matters only. A dispute about water rights in the case of a State which had contracted out of sections 130-133 would be such a non-federal matter.

The last clause of section 204 proviso (a) (ii) is looked upon as too wide. The J. P. C. report in this connection says, "the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of Federal Laws, by which we mean any laws enacted by the Federal Legislature."

It should be noted that it is only when legal rights are in issue that the court can take cognizance of a case. Mere conflicts of interests or disputes about policy are not justiciable issues.

Similarly boundary disputes between the States or a State and a Province cannot be decided by the Federal Court, as it does not come within the purview of the proviso to section 204 (1). The actions of the Governor General in his discretion or individual judgment can also not be questioned by the court.

It may also be observed that in Warren Vs. Murray (1894, 2 Q. B. 648) Lord Esher M. R. held that the actual "legal rights" of the parties meant their equitable as well as their common law rights.

The Federal Court has an appellate jurisdiction in respect of any judgment of a High Court in British India, if the High Court certifies that a substantial question of law as to the interpretation of the Act or of an order in council is involved. The words "substantial question of law" occur in section 110 of the Indian Code of Civil Procedure. In Hanuman Parsad Vs. Bhagwati Parsad (1902, 24 I. L. R., All 236), it was suggested that the words "substantial question of law" mean a question of great public or private importance.

The Federal Court has an appellate jurisdiction from the High Courts in Federated States also. Those High Courts in the States have got to be declared as High Courts by His Majesty for the purposes of the Act (Section 217). Whenever, in any action before the State Courts a Question of law arises which concerns the interpretation of the Act, orders in council made under the "Act or a State's Instrument of Accession, a right of appeal lies to the Federal Court (Section 207, 1)".

This appeal will be by way of "case stated." The Federal

Court may, if it thinks fit, cause letters of request to be sent to the Ruler of the State, calling upon the State Courts to state a case i. e. to set out the facts of the dispute and the law which it applied to those facts. If necessary the Federal Court may require the State Courts to set out further facts, when the facts have been insufficiently stated.

The Attorney General explained in the House of Commons that the appropriate phrase "letters of request" has been used in regard to a Sovereign Ruler instead of the expression of a direct order. The expression "letter of request" is familiar to Lawyers as a phrase used when one Sovereign Ruler makes a communication to another. It is merely an enactment to show proper respect to a a Sovereign Ruler. (Debates, House of Commons, April, 1, 1933).

The Governor-General may also obtain opinion of the Federal Court on matters of law of public importance, but it is not stated that such opinions, though delivered in open courts shall have binding effect. This advisory jurisdiction of the Federal Court is analogous to that possessed by the Privy Council under section 4 of the Judicial Committee Act 1833. The Supreme Court of Canada has also such jurisdiction as contrasted with the High Court of Australia which holds that it is not a judicial function. In the case of Northern Ireland advisory opinions of the Privy Council are given binding force. But dissenting judgments are not delivered in the Privy Council. In allowing expression of dissent the Federal Court follows the practice of the International Court at the Hague.

Appeal lies to the Privy Council from the Federal Court without leave from any decision of the Federal Court in its original jurisdiction dealing with the interpretation of the Act or Order in Council thereunder or the extent of the Legislative or Executive jurisdiction of the Federation in any State or an agreement made under part VI of the Act; in any other case leave of the Court or the Privy Council is requisite.

It may be assumed that in granting special leave the Privy Council will act on its usual principle and grant leave mainly where some important question of law or matter of public importance is involved and that it will adhere to its principle that it does not act as a normal court of Criminal Appeal but intervenes only to vindicate the law where there had been a miscarri-

age of justice by neglect of essential legal principles (Ras Behari Lal vs. K. E. 1934 60 Ind. App. 354). In another case Lord Dunedin said, "For them to interfere with a Criminal Sentence there must be something so irregular or so outrageous as to shock the very basis of justice. Such an instance was found in Dillet's case, which has always been held to be the leading authority on such matters. (1932 L. R. 591, A, 233.)" The jurisdiction of the Privy Council in relation to Indian States will be based upon the voluntary act of the Rulers themselves, i. e. their Instruments of Accession.

It need be observed that section 110 of the New Act preserves the prerogative right of his Majesty to grant special leave to appeal from any court.

The Imperial Conference for the Dominions of 1929 asserted with propriety that such powers implied control by the British Cabinet and that therefore it degraded dominion autonomy. The claim put forward by the dominions was finally accepted by the Imperial Conference of 1930 by all, including the United Kingdom.

Apart from the above mentioned cases, the action of the courts is excluded in respect of those state proceedings which are technically called Act of State, matters arising out of Political relations with foreign states such as treaties or annexations. On the same principle political dealings with Indian States have been held to lie outside the sphere of the Courts and it has been ruled that the court will not intervene against the action of the Indian Government in removing from office the Maharaja. (Maharaja Madho Singh vs. Secretary of State, (1904) L. R. 31 Ind. App. 239). In the same way the Privy Council has ruled that the jurisdiction exercised by the Political Officers in the Kathiawar States is Political and not judicial. It is impossible to foresee how the Judicial system will shape itself in the years to come. The part played by the Supreme Judiciary in a Federal Constitution has always been a crucial factor in other countries. The choice of Sir M. Gawyer as the first Chief Justice of India and Sir M. Sulaiman and Mr. M. R. Jayakar as the first Judges of the Federal Court, has been looked upon with great satisfaction and it is hoped that the Federal Court of India will establish traditions and standards of judicial talents, independence and propriety which will do honour to any constitution of the world.

200.—(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years:

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor-General resign his office;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(a) has been for at least five years a judge of a High Court in British India or in a Federated State; or

(b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession:

Provided that—

(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and

(ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this sub-section to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period

during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

The proposal of appointing Indian Civil Service men as Chief Justices was opposed on the ground that (1) because maintenance of the best legal traditions, in the interest of which the Joint Select Committee themselves recommend the recruitment of some judges from the Bars of the United Kingdom, is most essential on the part of the Chief Justice; (2) because it is fundamentally unsound that the head of the supreme Judiciary of a country may be not a lawyer at all and without any legal education, training or tradition; (3) because apart from his judicial work, in the matter of framing rules and circular orders for the subordinate judiciary, members of the Bar trained in the profession, naturally possess requisite experience in a large measure than any layman, however experienced; and (4) because the appointment of a civil service judge to the office of Chief Justice would impair public confidence in the Federal Court, both on account of his lack of legal training and his service associations with the executive.

Mr. W. P. Spens also spoke in the House of Commons against the proposal on April 1st 1935. He said, "I do not know a single instance on this side of the Atlantic or within the Empire where the Federal Court has not had to make a stand against the Executive.... I submit that in the interest of the liberty of the subjects it should be utterly impossible at any future time for the executive, either in this country or in India, to be able to put the subjects in that position." While replying to the debate the Solicitor-General said, "The judges of the Indian Civil Service start judicial work at the very outset of their careers, and that before they can be appointed to a High Court they have been for some ten or twelve years in very important judicial positions. It is really untrue to say that men who have had that experience have not had a very considerable legal training, and indeed I might say more legal training than some barristers of fifteen years experience have the

good fortune to get. As this court will have to deal almost exclusively with pure points of law there is a great deal to be said for the contention that the judge should be a person of legal training in the ordinary sense."

201.—The Judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

202.—If the Office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties therof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

203.—The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

204.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other Court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the

Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

The judgments of the Federal Court in the original side will be declaratory ones, in other words they need not involve any consequential relief. The jurisdiction thus conferred resembles in some respects that conferred on the Federal High Court of Australia which, by Section 75 of the Constitution, is empowered to decide "matters between States," a jurisdiction enlarged by the Australian Judiciary Act 1903—1907 to include "matters involving questions as to the limits inter se of the constitutional powers of the Commonwealth and the States, or of any two or more States". The effect of proviso (i) to section 204 of the Government of India Act is to vest in the Federal Court a very similar jurisdiction in the case of the States, in other words jurisdiction to decide "the limits inter se" of the constitutional powers of the Federation and the Indian States which have acceded to the Federation.

206.—(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in Birtish India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment decree or final order involves directly or indirectly

some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion.

207.—(1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

"It was urged before us that to permit a litigant in a State Court to apply to the Federal Court for leave to appeal, if the State Court had already refused leave, would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal, at any rate in a case concerning the interpretation of Federal laws, should be treated as final. We should much regret the inclusion of a provision of this kind. The appellate jurisdiction of the Federal Court, so far as regards an Indian State, arises from the voluntary act of the Ruler himself, viz., his accession to the Federation; the jurisdiction is in no sense imposed on him ab extra. This being so, and since it is proposed that all appeals to the Federal Court should be in the form of a

Special Case to be stated by the Court appealed from, we think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal by the Federal Court were in the form of Letters of Request, directed to the Ruler of the State to be transmitted by him to the Court concerned." (J. P. C. Para 325)

208.—An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

The substantial effect of these provisions for appeals is that the ultimate Tribunal upon all important Constitutional Questions under the Act or the Instrument of Accession will be the Privy Council. For the principles on which the Privy Council would grant leave to appeal, see introduction to this Part.

209.—(1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

210.—(1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery of production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

In the course of a discussion as to whether this section involves the attendance of Rulers of States or Governors of Provinces, the Attorney General explained in the House of Commons that under this section, the Federal Court is to have power to the Orders which any High Court in British India would have power to make in regard to the territory over which it has jurisdiction. (Debates, House of Commons, April 1st 1935).

211.—Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

212.—The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be

recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

213.—(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

Under this section the Governor-General cannot refer any treaty with an Indian State to the Federal Court for interpretation as the same are expressly excluded under the Instrument of Accession.

Lord Reading said in the House of Lords, "The question on which the Governor-General is asking for advice is a question of law, purely law. It is only upon that that he goes to the Court. It is not on any question of fact; it is not a question of discretion; it is only if it appears to him that a question of law has arisen or is likely to arise. Then he consults the Federal Court, just as here the Judicial Committee of the Privy Council can, under the Judicial Committee Act, be consulted. For my own part, I raise no objection to the publication. On the contrary it seems to me, if the Governer-General has thought it right to ask the Federal Court to give its view upon a point of law, that decision ought to be known. I cannot imagine that any question could arise as to whether or not he should act upon it. The fact whether he should do a particular thing or not is for him to decide. It has nothing to do with the Federal Court. The only question that goes to Federal Court is simply a question of law." (House of Lords Debates, July 4th 1935).

215.—The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

This section enables the Federal Legislature to concur ancillary powers upon the Federal Court. But it does not enable the Legislature to enlarge the powers of the Federal Court unless the States accept Item 53 of the Federal Legislative List, and even so, any powers conferred must be supplemental and not inconsistent with the provisions of the Act.

217.—References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

PART XII

THE CROWN AND THE INDIAN STATES

285.—Subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

This is an express recognition by the Parliament of the United Kingdom of the true position existing as between the Crown and the States. Except in so far as treaty or Paramountcy rights are brought within the Federal Field by the Instrument of Accession they remain outside the new Constitution. They continue to operate and to be dealt with directly between the Crown and the States as at present.

It has been pointed out that this section refers only to the rights and obligations of the Crown, and does not mention the rights of the Rulers affirmatively. The obligations of the Crown do not necessarily cover all the rights of the Rulers, as they may have rights which are not connected with the obligations of the Crown.

286.—(1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

The net additional expense, if any, incurred in consequence of the employment of troops as contemplated in this section, is payable by the Federation. But it is not open to discussion in the

Federal Legislature (see sections 33 and 145). There is nothing to prevent the Viceroy from recovering the expense in question from the State concerned and crediting or recouping the Federation with the amount.

294.—(1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the Provisions of this sub-section should apply, and references in this Act to a Federated State shall not be construed as including references to any such area:

Provided that—

(a) a declaration shall not be made under this subsection with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration;

(b) If His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State.

Nothing in this subsection applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an Authority exercising the power or jurisdiction by virtue of an act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either

generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted:

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order:

Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

It was necessary to make provision in the Act for dealing with the Crown's jurisdiction in the States under the Foreign Jurisdiction Act and for defining the principle that Paramountcy Powers cease within the Federal field. Prof. Keith has summed up the substance of this section in these words, "The special case of the jurisdiction already enjoyed by the Crown in certain areas in the States, e. g. at Secunderabad and Bangalore, is provided for by the rule that the Crown may in signifying acceptance of any accession declare that the Federal authority shall not apply, due notice of course being given to the Ruler that the acceptance will contain such declaration, by agreement between the Crown and the Ruler the Federal Authority may later be extended on such terms as may be specified in a supplementary Instrument of Accession. But no notice can be given in respect of any area which is under the Crown's jurisdiction solely in connection with a railway. Subject to the above rule, on federation any authority of the Crown under the Foreign Jurisdiction Act, 1890, or otherwise, shall become exercisable by the Federal authorities, including the railway authority, except in so far as any agreement may be made under Part VI of the Act for administration of Federal Legislation by the Ruler. The law in the matters concerned in force in the state is to be deemed to be a Federal law in so far as the federation under the instrument of accession could re-enact it, but shall cease to have effect after five years if not so enacted, or amended, or repealed.

In all other cases the powers of the Crown in a State shall remain unaffected, without prejudice to its power to relinquish such authority, and the Order in Council of 1902 is reaffirmed as valid. It is also provided that an Order under the Act of 1890 may validly authorize judicial or administrative authorities to act in respect of a state though situated outside the state, and that appellate jurisdiction from British courts in Indian states may validly be conferred on the Federal Court. Moreover nothing in the Act is to limit the power of the Crown to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian states."

295.—(1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province:

Provided that nothing in this subsection affects any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a Court martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

The right of prerogatives mentioned in subsection (2) above was delegated for the first time in the Royal Warrant of appointment in 1916.

In a Canadian case (Hudson's Bay Co. v. Attorney-General for Canada, 1929 A. C. 285) the prerogative right over gold and silver mines was held to belong to the Crown. . . . .

297.—(1) No Provincial Legislature or Government shall—

(a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or

export from, the Province of goods of any class or description; or

(b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

The prohibition applicable to the Provinces under this section does not apply to the States, but they will nevertheless enjoy the benefit of it. The only way in which State goods could be subjected to internal duties would be by fixing a Customs Frontier at a State border. This can only be done by the Federal Government as they are not included in this section. This is a very far reaching prohibition and may be compared with the requirement of free trade between the States in the Commonwealth constitution, which has given rise to difficult issues, still unsettled; for instance, how far may the entry of diseased or suspect cattle from another state be checked? Nor may there be discrimination by toll, cess, tax, or due between goods manufactured in or the produce, of the province and other goods or between goods manufactured or produced outside the province according to locality.

The Federal Legislature is nowhere restrained from interfering with freedom of trade between one Province and another. Nor is the Federal Legislature, as it is in Australia, forbidden to discriminate in the matter of taxation, customs, excise and bounties. The Federal Legislature can, when legislating in these matters discriminate between one Province and another and, in view of its power to legislate "exclusively" in subjects enumerated in the Federal List, might legislate locally for one Province by leaving an excise duty, the operation of which was confined to that Province or, what amounts to much the same thing, varying the rate of an excise duty as between one Province and another. There is no provision in the Government of India Act, as there is

in the Australian Commonwealth Act, requiring the Federal customs and excise duties, and indeed Federal bounties, to be "uniform" throughout the Provinces of British India. Paragraph (a) of subsection (1) of Section 297 is, however, worded in sufficiently wide terms to secure any neighbouring State, whether Federated or not, from any prohibitory or restrictive legislation by a Provincial legislature in the matter of trade and commerce between the State and the Province and it is clear from the Canadian and Australian appeal cases that the paragraph will be interpreted by the Privy Council in such a manner as to secure the States completely from any discrimination against them, or one of them, in the form of interference with their trade and commerce, so far as action by the Provinces is concerned. The fact remains, however, that this paragraph, like the paragaph following it, may be repealed by an amending Act of Parliament without the consent of the States. Such a contingency is, however, improbable as its repeal would also enable the Provinces to restrict inter-Provincial trade and such legislation would be "anti-Federal" or, to speak more properly, would reverse the process of what the Joint Parliamentary Committee has called "the full development of Federation."

299.—(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section 'land' includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

This section provides that no person may be deprived of his property in British India save by authority of law. Laws providing for the acquisition of land for public purposes or any commercial or industrial undertaking or interest therein must specify the compensation or the mode in which it is to be assessed.

308.—(1) Subject to the provisions of this section, if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motions proposed in like manner, present to the Governor-General or, as the case may be, to the Governor—an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament. In performing his duties under this subsection the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding subsection are—

(*a*) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature,

or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States;

(*b*) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature;

(*c*) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and

(*d*) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding subsection, the provisions of subsection (1) of this section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the commencement of Part III of this Act.

(4) His Majesty in Council may at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in subsection (2) of this section:

Provided that—

(i) if no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or, as the case may be, the Provincial Legislature support the proposal:

(ii) the provisions of Part II of the First Schedule to this Act shall not be amended without the consent of the Ruler of any State which will be affected by the amendment.

This section provides for proposals being made by Federal Legislature (or any Provincial Legislature) for amending the provisions of the Act relating to the size or composition of the Chambers of the Federal Legislature (or a Provincial Legislature), or the methods of election and the qualifications of members, or the qualifications of voters. No such proposal can be made, in the case of amendments relating to the Federal Legislature, before the expiration of 10 years from the establishment of Federation. The proposal is laid before Parliament and if approved the amendment may be made by Order-in-Council.

It is to be observed, however, that no such amendment can be proposed or made if its effect would be to vary, as regards either Chamber of the Federal Legislature, the proportion between the number of seats allotted to British India and the number of seats allotted to the States; and, further, that no amendment can be made in the provisions of the Act (Part II of the First Schedule) which govern the appointment to, and allocation of, State seats in the Federal Legislature without the consent of the Ruler of any State affected by the amendment.

INTERPRETATION.

311.—(1) In this Act and, unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"British India" means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces;

"India" means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India;

"Burma" includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India, being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam;

"British Burma" means so much of Burma as belongs to His Majesty;

"Tribal Areas" means the areas along the Frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any Foreign State;

"Indian State" includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India;

"Ruler" in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"Agricultural Income" means agricultural income as defined for the purposes of the enactments relating to Indian income tax;

"Borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly;

"Chief Justice" includes in relation to a High Court a chief

judge or judicial commissioner, and "judge" includes an additional judicial commissioner;

"Corporation tax" means any tax on so much of the income of companies as does not represent agricultural income, being a tax to which the enactments requiring or authorising companies to make deduction in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application;

"Corresponding Province" means in case of doubt such Province as may be determined by His Majesty in Council to be the corresponding Province for the particular purpose in question;

"Debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;

"Existing Indian law" means any law, ordinance, order, byelaw, rule or regulation passed or made before the commencement of Part III of this Act by any Legislature, authority or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation;

"Goods" includes all materials, commodities, and articles;

"Guarantee" includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount;

"High Court" does not, except where it is expressly so provided, include a High Court in a Federated State;

"Local Government" means any such Governor in Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not save where the context otherwise requires, include any Local Government in Burma or Aden;

"Pension" in relation to persons in or formerly in the service of the Crown in India, Burma or Aden, means a pension, where contributory or not, of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the

return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;

"Pleader" includes advocate;

"Provincial Act" and "Provincial Law" mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act;

"Public notification" means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province;

"Securities" includes stock;

"Taxation" includes the imposition of any tax or impost whether general or local or special, and "tax" shall be construed accordingly;

"Railway" includes a tramway not wholly within a municipal area;

"Federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;

"Indian State Railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government, the Federal Railway Authority, or any company operating a Federal Railway;

"Minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not; and

"Unit" means a Governor's Province, a Chief Commissioner's Province or a Federated State.

(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

(4) In paragraph (3) of section eighteen of the Interpretation Act, 1889 (which paragraph defines the expression "colony") for the words "exclusive of the British Islands and of British India" there shall be substituted the words "exclusive of the British Islands and of British India and of British Burma".

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in

Council or to Legislatures, courts, or authorities in, or to matters relating to the government or administration of, India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of this Act or the Government of Burma Act, 1935.

Any power of any legislature under this Act to repeal or amend any Act adapted or modified by an Order in Council under this subsection shall extend to the repeal or amendment of that Order, and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or a Governor-General's Act or, as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

FEDERAL LEGISLATIVE ITEMS

ITEM 1.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed Police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

The matters enumerated in this Item cover what may be described in general terms as the department of defence, which is reserved to the Governor-General in his discretion under the Act. Throughout the Round Table Conference discussions, the defence was treated as a Crown subject outside the federal sphere, but this position was modified in the White Paper. In a memorandum submitted to the Joint Select Committee by Hyderabad State on first November 1933 it was said, "Although in the White Paper this proposal is modified, at any rate in form, the State places reliance on the fact that the effective reservation of defence to the Crown is an integral part of the proposed constitution and that no modification could at any time be made in this regard without a fundamental change in the constitution".

It may be observed that although "Law and Order" is a Provincial subject, the Military Forces can be sent in the Provinces by the Governor-General if any disorder breaks out in a Province and the Police is not able to cope with the situation. The States are also diffident about accepting this item without reservation, because it is apprehended that it is impossible to define in advance the extremely wide phraseology of the item particularly in times of war or emergency. The main limitations suggested are to safe-

guard against the entry and continuance of His Majesty's troops in the States under Section 286 irrespective of the wishes of the Ruler, the imposition of compulsory military service in the State and the maintenance of treaty rights with regard to defence. The views expressed on behalf of the British Government regarding the suggested limitations are briefly speaking, that the troops could only be sent to the State at the instance of the Viceroy. This matter would therefore remain within the sphere of Paramountcy. As regards the interpretation to be placed upon the words "attached to or operating with any of His Majesty's Forces", the State troops could only come within the meaninig of these words if an arrangement has been agreed upon with the State for the purpose. It would seem in fact that the position would be no different from what it is at present. With reference to the terms on which State troops could be employed outside the State, it has been suggested that this would continue to depend upon arrangements to be arrived at from time to time through the Crown Representative.

As regards the pecuniary position, it might be questioned whether it would be correct for any portion of the defence charges to fall on the units, after their having federated for the item. The Davidson Committee Report said that, "In view of the recommendations of the Sub-Committee, we do not propose to attempt to translate into a money-equivalent the value to be attached to the military contributions of the Indian States.....We consider that the existence, strength and efficiency of the forces cannot be ignored." (Also see notes under section 11).

ITEM 2.

Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

This item is primarily intended to refer to the naval, military and air force works of His Majesty's forces, but the words might also cover "works" belonging to a State and used in connection with its own forces. It should also be remembered that cantonment areas may under section 294 of the Act be kept out of the Jurisdic-

tion of the Federation and if this is done, this item will have no application to such an area. Moreover the definition of "works" is not clear. The Government view is that the Item does not seem to include works belonging to the States or used in connection with the State Forces.

ITEM 3.

External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

The words "external affairs" precede this item. It has to be seen what do these words actually mean and what is their effect on the meaning of the words which follow them. The term is legally speaking a very unscientific one occurring nowhere else in the Statuted Books except in the Australian Commonwealth Act (Section 51, Item 29). The earliest and the most authoritative commentator on that Act describes the term as "Least capable of definition". The High Court of Australia has recently held in this connection that any Federal Act expressly inacted to implement any international treaty, would be valid even though the subject matter was a matter reserved to the State.

It is generally believed that the term "external affairs" in this item is intended to mean only affairs external to India. This subject is in the hands of the Governor-General in his discretion.

The acceptance of this item means that the States empower the Federation to make treaties on behalf of the whole Federation including the States. At present they are not bound by such treaties at all but in deference to the persuasion of the Government of India, re-inforced by considerations of Paramountcy, they voluntarily accept the resolutions of the Government of India. In future this optional character of their acceptance of such treaties and resolutions will entirely disappear whenever a treaty relates to a Federal Legislative item included in their Instrument of Accession. This, however, cannot alter the legal position under section 106 of the Act.

"Extradition" in the Item refers to extradition between India and countries outside. It does not include extradition between a

Federated State and British India or another Federated State. Item 3 of the Concurrent Legislative List—"removal of prisoners and accused persons from one unit to another unit"—covers the subject as regards the Provinces inter se, but that Item is not applicable to the States. The Position as regards extradition between a State which accedes for this Item and (a) British India or (b) other Federated States will remain as at present and will not be subject to Federal Jurisdiction, although accession will probably facilitate the conclusion of extradition agreements. It might be possible to argue that extradition between a Federated and a non-Federated State comes under the Item.

ITEM 4.

Ecclesiastical affairs, including European cemeteries.

This is a reserved subject, but the costs are limited in the Act to Rs. 42 lacs per year as the maximum amount. [Section 33 (3) (e)].

This Item is intended to cover a very narrow field now administered by the Department of Ecclesiastical Affairs, namely, the provision of Christian ministrations to members of H. M's. forces and others in the service of the Crown in India. The Item might however, as a matter of law be given a wider meaning including the control of all Christian churches and cemeteries, and it might even possibly be read as extending to non-Christian religions having an organisation which could be described as "Ecclesiastical." A reservation in the Instrument of Accession limiting the Item to its intended scope would probably be advisable.

ITEM 5.

Currency, coinage and legal tender.

This Item is supposed to cover the subject of paper and metallic currency. With regard to this Item very few States have unrestricted and unlimited powers. Some States are deriving revenue indirectly and some are in receipt of definite sum given by way of compensation when the local currency was withdrawn and British Indian currency was introduced. Many States do not

derive any financial compensation for having surrendered this right, often during the period of the minority of the Ruler. The population of the States will not be called upon to make contributions in respect of currency profits at a rate higher than the rest of India.

With regard to the claims of the States under this item, the Davidson Committee report says, "It is also necessary to refer to the claims of States which, being debarred, permanently or temporarily, from the privilege of minting, argue that the privilege should either be restored to them or taken away from those which exercise it at present. The raising of immunity debits against the privileged States would, of course, disarm criticism of this kind, and the question whether such debits could or should be raised will be considered in a later paragraph. It is sufficient here to remark that the revival of mints which have been closed in the past, or the minting of coin by States which have never hitherto exercised the right, would be even more inconsistent with Federation than any system of dividing among federating units the profits accruing from control of the Federal Currency. But we recognise that, where mints have been closed only for a definite term of years on the understanding that the State is entitled to re-open them when that period has elapsed, definite rights exist which cannot be terminated save by consent." (Para 409).

"In conclusion we suggest that in any case where the re-opening of mints or the continued issue of metallic currency may be considered inimical to the interests of the Federal Currency, efforts should be made to arrange, by negotiation, that such operations should be confined within purely nominal limits or to the production of coins intended for ceremonial as opposed to currency purposes." (Para 412).

It has been thought desirable for obvious reasons that there should be one uniform currency throughout the Federation. It is not improbable that the smaller States which at present minted their own currency would be compelled to convert their local currency into Government of India currency before many years have passed.

It may also be observed here that any Bill which affects the coinage or currency of the Federation requires the previous sanction of the Governor-General in his discretion before introduction into the Federal Legislature. (Section 153).

ITEM 6.

Public debt of the Federation.

The acceptance of this Item would not enable the Federation to impose a financial obligation upon an individual State. It includes the pre-Federation debt, and represents liabilities incurred by the Government of India whether for their own purposes or for the Provinces, whether for commercial department or for unproductive purposes. The total public debt of India is Rs. 1210.74 crores on 31/3/36.

As stated in the Percy Committee reports Para 48, the debt consists of:—

"(1) Interest-bearing liabilities, viz., loans (Sterling and Rupees), treasury bills held by the public and in the Paper Currency Reserve, balance of the War contribution payable to the British exchequer, railway debenture stock and outstanding capital of railway annuities, Post Office Savings Banks deposits, cash certificates, provident and certain family pension funds, depreciation and reserve funds, and interest-bearing provincial balances;

(2) Non-interest-bearing liabilities of a liquid nature consisting of a variety of items like deposits;

Less (3) Liquid assets consisting of cash balances etc."

The Governor-General has special responsibility for this item. It is not possible to say what portion of the public debt was incurred for any particular liability except in the case of railway debenture stock and outstanding capital of railway annuities and the balance (16.72 crores) payable to the British exchequer on account of war contributions. But a large portion of the money raised has been utilised to meet capital advanced to railways and other commercial departments of the Central Government, to Provinces for canals and other purposes and to Indian States and for other interest-bearing-loans.

(Please see para 50 of the Percy Committee also.)

ITEM 7.

Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

In principle it is desirable that there should be unified control of Posts and Telegraphs, but it has been recognised that certain States may not be willing to abandon their own Posts and Telegraphs services.

As regards Post Office Savings Bank in the States, para 391 of the Davidson Committee report says, "In regard to the grievances of States arising out of banking operations carried on by the Posts and Telegraphs Department, the Government of India informs us that its position may be stated in the following terms:—

"We admit, however, that it would be a new and unjustifiable principle of political practice to hold that the Paramount Power is entitled to carry on these transactions in States against the wishes of the Rulers, and, in some cases, in competition with the Darbar's own local arrangements. We are prepared, therefore, to arrange for their complete cessation in the territory of any State which definitely asks for it."

In our opinion, the above pronouncement effectually disposes of all grievances under this head."

The question of Mail Robbery Rules has also been discussed in the Davidson Committee Report in para 392. It says, "The action proposed by the Government of India in respect of the Butler Committee's recommendation regarding the mail robbery rules is as follows:—

It is proposed that these rules should be replaced by a Government Resolution in which it would be made clear that the Paramount Power reserves the right to claim and exact compensation in any case where a mail robbery is found to be attributable to the failure of an Indian State to make police arrangements to secure the reasonable safety of life and property in any area or to afford suitable protection to routes over which mails are carried. In so far as robberies may be due to, or facilitated by, individual derelictions of duty, it would not be easy to maintain the principle of liability, since such incidents may occur in British India as well as in States. But if any particular flagrant case were brought to notice, the question of demanding compensation would be considered on its merits."

The issue of free postage stamps has been regarded to be an anti-federal privilege and it was not possible to expect that States which did not receive a free issue of service stamp at present

should have the concession extended to them now. The Davidson Committee Report is definitely against it.

With regard to the various Government Resolutions on the subject of telephones and telegraphs, these resolutions would of themselves have no validity after the inauguration of Federation. It would rest with the Federal Government—of which the States themselves would be a part, to prescribe the policy of the Federation in such matters.

Special provisions with regard to broad-casting are made in section 129. Broad-casting has been defined to mean the general diffusion of wireless of spoken matter and music, not the transmission by wireless of telegrams or telephone messages. The effect of the provisions under section 129 of the Act is to oblige the Federal Government to entrust to the units, both Provinces and States, certain functions in relation to broad-casting. These functions concern both transmitters and receiving apparatus. There will be both federal transmitter and State transmitters. The former will be under federal control, while the latter will be managed by the States under conditions imposed by the Federal Government. Such conditions cannot extend to the regulation of the matter broad-cast. The Governor-General in his discretion will decide about any disputable points in this connection. The functions under the Act will be entrusted to the States to enable it to regulate and impose fees in respect of receiving apparatus within the States. But the Federation retains the right to control the use of receiving apparatus within the States by persons authorised by the Federal Government (Section 129 (1)). The general view is that this matter should be dealt with on the lines of the Government of India Resolution number 178 R/30 dated 22nd February 1932.

The control of receiving apparatus might imply a question of finance, and as such, the States desire that there should be some equitable arrangement which would secure to the States the fees derived from receiving apparatus used within the States.

ITEM 8.

Federal Public services and Federal Public Service Commission.

At first sight the item appears to be one as regards which no limitation by the States is necessary, but it is apprehended that the Federal Legislature might under this item or otherwise exempt Federal officers from State Legislation. It is also argued whether this item includes the officers of the States doing federal work. The Government view is that this item does not include States Officials who might be entrusted with the administration of Federal laws. Section 124 (3) of the Act makes mention of Officers and Authorities of the State and as powers of appointment and dismissal etc. would remain with the Ruler there could be no question of any transfer of allegiance on the part of State Officers simply because they performed federal functions.

ITEM 9.

Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

This item does not concern the States. Acceptance would not involve any Federal action within State Borders.

ITEM 10.

Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force Works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

This item is for the purpose of enabling the Federation to have a free hand in matters such as building restrictions, rights to light, laying of cables in respect of works, lands and buildings belonging or leased to the Federation. The States desired a reservation that the Federation should not exercise Governmental or jurisdictional rights on works, lands and buildings in its occupation in the States. The Government view seems to be that there was no power in the Federation to exclude

the criminal and civil jurisdiction of the States over land and buildings situated within its borders, which might come into the possession of His Majesty for the purposes of Federation.

It can be argued that under this item any legislation which the Federation might enact in respect of works, lands etc. held under lease or agreement in a Federated State would always be subject to the terms of that lease or agreement, if any, with the States. But the Federation might become possessed of works, lands and buildings by lease or agreement with private parties or even without any lease or agreement at all. For example, an existing Government of India Post Office in a State becomes a Federal Post Office and thus might pass to the Federation under section 172 (1) (b). If it was originally held without a lease or agreement, it would continue to remain as such. This point has got to be thoroughly examined still.

The General view in the States seems to be that an understanding should be reached with the Government of India as to precisely what powers are really desired in this respect. In the case of any property held by the Government within the States without any lease or agreement with the States, a lease or agreement sh ould be necessary.

ITEM 14.

The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

It is understood that the various Surveys mentioned in this item cover the Federal Surveys only and that it does not enable the Federation to prevent the States from carrying out its own Surveys, which the States may like to make.

Acceptance of this subject by a State without reservation might enable the Federation to set up and operate a meteorological station in the States. In the White Paper and J. P. C. Report, this subject was called meteorology, which suggests something rather more abstract than the present subject. It may be said that as the Federation is not to have power to acquire land in the States compulsorily, the States will in fact be able to control the establishment of a meteorological station.

ITEM 15.

Ancient and historical monuments; archaeological sites and remains.

This item was not formerly the one, for which the States were to be asked to federate. The States are particularly apprehensive that this item may give power to the Federal Legislature to remove articles belonging to the States from the State's possession for the purpose of housing them in a Museum. Apparently, there could be no constitutional objection to a limitation designed to protect the State interest in this respect.

Local Administration may be reserved by the States.

ITEM 16.

Census.

This item covers the decennial Census or any other Census which the Federation may determine to make. The States have also been advised in this connection to reserve for the determination of the Rulers, the description of caste and religion of the people. Any additional information needed by a State may also be called for.

ITEM 17.

Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

This item does not seem to empower the Federation to deal with migration between one unit and another of British subjects or State subjects, or with the movement of foreigners from one unit to another where this has no relation to admission to or expulsion from India. Such migration comes, as regards the Provinces, under Federal item 50, which is not applicable to the States. It has been observed that there was nothing in this item which would restrict the power of the Ruler to regulate the movement of undesirable foreigners within the States. But, all

the same, this item, if accepted without reservation might as a matter of law empower the Federation to provide for the emigration and expulsion from India of State subjects and their removal from the States for that purpose. It might further be urged that the Ruler's freedom of action would be fettered by an obligation to implement the requirements of any Federal law enacted in relation to admission of persons into, or their emigration or expulsion from India.

It may be claimed that the administration of the Federal Law relating to this item should be entrusted to the States.

ITEM 19.

Import and export across customs frontiers as defined by the Federal Government.

ITEM 44.

Duties of customs, including export duties.

These two items can be conveniently read together. It might be primarily thought that these items only refer to import and export and customs duties at the ports and existing boundaries of India, but the customs frontier could be defined by the Federal Government so as to lie on the land boundary of a State. These items may also enable Federation to prohibit the import or export of goods across a customs frontier.

The States generally will include a reservation in their Instruments of Accession to the effect that the Federal Legislation shall not have power to interfere with the States rights to collect import and export duties at their own frontiers. Such a reservation should be constitutionally unobjectionable. It had been suggested on behalf of the Government that these two items have reference to Federal Frontiers only and that the interests of the States were fully safe-guarded against discriminatory treatment under the provisions of section 108 (1) (f) of the Act. But the definition of Federal Frontiers have not yet been made available.

Item 19 is concerned with the fixing of customs frontiers, while item 44 relates to the levy of customs duties including export duties and is purely a fiscal item. (For further details see the relevant sections of the Act).

ITEM 20.

Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

In regard to minor railways, the content of the item is limited to safety requirements and responsibility as carriers of goods and passengers only. In regard to Indian State railways the Federal Control is limited to the questions of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers. The terms "Federal Railway" "Indian State Railway" and "Minor Railway" are defined in Section 311 of the Act.

The interests of States and the State Railways are protected by sections 193—195 of the Act which are comprehensive sections. As regards retrocession of civil and criminal jurisdiction on railways, which the States have been pressing, the question is still under the active consideration of the Government, and policy in this matter has not yet been finally determined. This question is said to be not inherently connected with the Federal scheme. The retrocession of small sections of railway line to numerous different States would probably render effective police control impossible, if it were not for the details given by the last part of item 39, which authorises the extension of powers and jurisdictions of the Police Force belonging to one unit to railways outside that unit. It was necessary that for any general retrocession of jurisdiction there should be such an item, since there are certain conditions required for effective police working on railways. One is uniformity of police regulations and the other is that there should be a sufficiently long stretch of line to constitute one gazetted officer's charge.

The States also contemplate a reservation against compulsory acquisition of land for railway purposes. It has been argued that the object under reference is already adequately achieved by

section 195 (2) which gives very substantial protection, but if the States remain unconvinced, the limitation suggested might be considered.

Local administration may be reserved in the case of Indian State Railways and minor Railways.

(For further details see the relevant Chapter of the Act).

ITEM 24.

Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

ITEM 25.

Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

ITEM 26.

Carriage of passengers and goods by sea or by air.

These items will deal with the whole subject of aircraft and air navigation, including the manufacture of aircraft, the investigation of accidents, the licensing of pilots and aeroplanes and the prohibition of flying in certain areas; the establishment of aerodromes and their control and regulation; the establishment of air services and air routes, including power to prohibit the State from establishing an air service or aerodromes. Probably the power to establish aerodromes does not include power to acquire land compulsorily in a State for the purpose of an aerodrome.

The States have suggested a number of limitations to safeguard their rights with regard to local air service, prohibited areas and maintenance of customs out-posts at the aerodromes.

In connection with these items distinction should be borne in mind between (i) Federal Air services and (ii) Private Air services.

As regards the first, the Federal Government would always retain discretion to open through air lines any where in the Federation and it was most unlikely that any reservation preventing them from doing so would be considered. As regards private air service it would be necessary for a Company to obtain land for

aerodromes for which the consent of the Ruler would in every case be necessary. The position after Federation would not be very much different from that contemplated by the F. & P. Department resolution of 1932, except that the Ruler might leave it to the Federation to notify prohibited areas after consultation with him. The necessity for the Federal Government to notify such areas was due to the obligations undertaken by the Government of India when it adhered to the Warsaw Convention. Moreover, the Federation must retain control and ultimate discretion in this matter in order to guard against possible perversity on the part of a State and to enable it to make prohibitions really effective.

There appears to be nothing in the Act to prevent the State from developing air services inside the State subject to the compliance with the safety provisions of a Federal Law.

These items may be used for earning revenues. The States have an interest in the charges which might be fixed for air traffic. They should be reasonable whether the air traffic is conducted by the Federation as a State service or it is conducted through licenced monopolies. The Federal Legislature might levy a tax on carriage of passengers and goods by air.

ITEM 27.

Copyright, inventions, designs, trademarks and merchandise marks.

The acceptance of this item without reservation would enable the Federation to destroy rights in respect of copyright, inventions etc., already acquired under State law before the Federal Law comes into force. Therefore, the State have suggested a reservation to the effect that the copyright, inventions, designs, trademarks and merchandise marks already registered in a State under the State Laws should be deemed to have been registered under any Federal Law made applicable to the States. It has been observed that the existing Indian Legislation can only be applied to States by virtue of a Federal Act, and in the meantime State Law will continue. It is possible that the Federal law might contain a provision to cover existing copyrights and patent, if any, that have been granted by the States. In India there is no trade marks and

designs Act. The registrations in India are treated as creating the rights in favour of parties.

This item involves initial fees in respect of copyrights and registration of patents and inventions, registration of designs, of trade marks and of merchandise marks.

ITEM 28.

Cheques, bills of exchange, promissory notes and other like instruments.

In the White Paper the item read as "Negotiable Instruments". The Central Banking Committee recommended a Special Banking Act applicable to All-India in order to consolidate all legislations on the subject. Similarly the Negotiable Instruments Act embodies the commercial law with regard to Hundies, Bills and other negotiable Instruments. It is good to have uniform commercial laws for the whole of India for the convenience of the trading classes both in Indian States and in British India; and from this point of view it would be desirable for the States to federate on this item. The only objection on behalf of the States could be that if the duty on cheques, which existed at one time, is levied again, the amount collected will go to the Federal fisc. As the stamp duty on cheques, bills of exchange, promissory notes and other like instruments is specifically provided under item 57, and if the States do not federate under item 57, this item may not be construed to include any financial liability, but must be assumed to include merely the regulation.

ITEM 29.

Arms; firearms; ammunition.

This item covers the whole subject of arms and ammunition, both military and sporting. It includes firearms as well as arms other than firearms. There is at present some variation between Provinces in regard to the extent to which carrying of arms is permitted. There is no reason to suppose that in future the arms Act and the rules made thereunder by the Federation would not allow a similar latitude, and if States federate without reservation, their representatives on the Federal Legislature would presumably take care to see that there is elasticity in the Act. The political

control which at the moment is exercised over the import into the States through the political Officers might be removed, if the Act confers administration on State Officers.

This item will involve licensing fees for bearing arms. If no reservation is made, the State subjects would make themselves liable to the payment of such license fee. It is not quite clear whether the Ruler himself may not similarly be liable. The army maintained in Indian States might also come under the operation of the license fees.

ITEM 30.

Explosives.

This item covers the whole subject of explosives of all sorts, as well as the control and regulation of the import and export, manufacture, storage and sale of explosives in the States. All explosives are not allowed to be imported in India. The Indian Explosive Act IV of 1814 provides the details on the subject. Rules for the storage of explosives away from a town already exist in British India. These rules involve restrictions but may in future involve the collection of fees for the use of explosives and inspection charges in order to see that the explosives are used consistent with human safety.

It was feared that this item might include crackers and fireworks etc. In British India discretion in this respect is left to the local authorities. It seems justifiable to assume that the States would be treated by the Federal Act in the same way as other Federal Units. The Provinces have power to grant licenses in respect of crackers etc.

Local administration may be reserved by the States.

ITEM 31.

Opium, so far as regards cultivation and manufacture, or sale for export.

Under this item, if no reservations are made the Federal Government can regulate the conditions under which Opium is to be grown. Item 40 of the Provincial Legislative List empowers the Provinces to levy excise duty on the opium produced or manu-

factured in a Province, and the Federation has no legal means to stop the levy of such excise. The British Government has made opium agreements with individual States and therefore, the cultivation of opium is not going on in the States at present. But the States generally, claim the right to renew cultivation, if necessary, and that the opium required in the States should not be subjected to any excise duty. It is desired that the arrangements under the existing agreements may be maintained.

The policy of the Government is that there should be central control of opium and that its cultivation should be restricted as much as possible. There are only two areas where any considerable cultivation of opium is permitted, one in Ghazipur and the other in Malwa. Malwa opium has the best reputation for quality and therefore, the Malwa States contend that they should be the supplier of opium for the whole country.

It has been argued, that it was on every ground desirable that the power of the Federation to control the cultivation and manufacture of opium should be unfettered and that any limitation restricting this control would in all probability be unacceptable.

Local administration, if any, may be reserved.

ITEM 32.

Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

Petroleum and other explosive liquids form the subject of this item only with regard to possession, storage and transport. So far the Government of India has been practically administering this subject without any reference to Indian States. It is apprehended that Federal Laws with respect to the possession, storage and transport of petroleum might seriously interfere with the discharge of their duties, by the different State departments, particularly by military and police.

But this item is essentially a safety item and laws passed under it would be primarily concerned with safety conditions. The possession, storage and transport may be done under licenses and charges may be fixed for these licenses.

ITEM 33.

Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

This item is based on the principal of reciprocity and in so far as any State proposes a limitation which is inconsistent with this principle of reciprocity their proposals amount in effect to non-acceptance of this item. If a corporation originating outside the State complies with Federal Law, but is subjected by the State to restrictions before it can operate in State territory, then that State cannot expect any better treatment from other units as regards the State's corporations.

The question as to what amounts to a corporation carrying on business within the State, has in various connections often been raised in English Law and is a matter of considerable difficulty. Such a corporation is not necessarily precluded from doing certain things outside the State's boundary i. e., ordering goods required for the business within the State, but, broadly speaking, any corporation undertaking any substantial activity outside the State—a mining company with a selling organisation outside the State boundary—would probably amount to carrying on business outside the State.

This item is wide enough and includes item 38 also, but it is stated that this item only relates to incorporation, regulation and winding-up of trading corporation. Thus it only concerns the administrative arrangements involving registration of companies and the framing of the law relating to the regulation and winding up, that is to say, the Indian Joint Stock Company Act would apply to all corporations in the Federation. This item is not supposed to involve any taxation, as item 46 specifically deals with corporation tax. It has been suggested that the States should ask for a limitation to the effect that in the event of companies operating within the States being wound-up, the assets of the Company in the States should be with the court liquidator in the States and should be used for paying off liabilities of the company in the

States. This is a right which several countries in the world have reserved to themselves in respect of foreign companies working therein. If the States do not desire to federate on this subject, they must be prepared to find discriminations being made against them by the Federal Government in respect to subsidies, bounties, and other matters.

ITEM 34.

Development of industries, where development under Federal Control is declared by Federal Law to be expedient in the public interest.

This item appears to be primarily intended to provide for the development of industries by means of subsidies and bounties and the creation of central institution for research. But legally speaking, this item covers a wider scope and might include regulation of conditions of labour, price fixing and marketing, and in general everything coming under the head of what is known as rationalisation. It is thus not possible at present to forecast what use the Federal authority in future may make of the powers conferred by this item and it might be necessary on occasions for the benefit of an industry to restrict production. It is difficult to justify the suggestions that the States should accept only the benefit in the way of subsidies etc. and at the same time contract out of any obligations imposed in the interest of any all-India interest.

It may be added that although the development of industries is even under the present constitution a central subject, nevertheless so far action had only been taken with reference to two industries. There was no legislation in force at present authorising expenditure from central revenues in Provinces for this purpose. Under the Government of India Act 1935, development of industries would primarily be a Provincial subject except where development of any particular industry was declared by Federal law to be under Federal control.

The question of discrimination arises in rather an acute form under this item. The Act does not seem to provide any effective safeguard. The special responsibility of the Governor-General under Section 12 (*g*) refers to the rights of any Indian State, but does not refer to the indirect consequences of accession to the Federation

under certain heads such as item 34. There is no specific provision in favour of States' economic interests in terms used in section 12 (1) (c) for minority and in section 12 (1) (f) for United Kingdom Goods. The only safe-guard is in article XV of the Instrument of Instructions which interprets section 12 (1)(g) and which makes it obligatory for him to intervene against any action of ministers or legislatures which would imperil the economic life of any State. It is difficult to define the position which would amount to the imperilling of the economic life of any State. There can be circumstances which although being seriously prejudicial to the States, might not be looked upon as would imperil the economic life of the States.

ITEM 35.

Regulation of labour and safety in mines and oilfields.

This item enables the Federation to regulate labour and safety conditions in mines and oilfields in the States. The Government of India has international obligations in regard to regulation and safety of labour, which the Federal Government will have to inherit. It is also desirable that the Federal Legislature should have power if necessary to make laws applicable to the whole Federation on the subject of labour. In view of these reasons the States cannot be allowed to ignore world-wide sentiments in regard to labour welfare and no reservation under this item is likely to be accepted.

ITEM 36.

Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

The intention of this item is to make it possible for the Federation to enforce sound methods of mining and to ensure the conservation of the mineral resources of the country. It is believed to have a particular reference to coal fields where there has been wasteful mining in the past. At present there is no central legislation on this subject and it is premature to say to what extent it may be brought under Federal control.

The development of industries was primarily a Provincial subject (Item 29 of List II of Schedule VII) and that at any rate until the Federal Legislature thought fit to exercise the power conferred upon it by this item and item 34, the development of industries inside the unit of the Federation would be entirely a matter for the units.

ITEM 37.

The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List by a Province.

The Indian Life Assurance Act 1912, the Indian Insurance Act 1928 are administered by the Government of India to which companies are required to furnish accounts, balance-sheets and other statements. Administration under the provident insurance societies Act 1912 is now Provincial and would presumably be by the State Agency in a State under section 124 of the Act.

ITEM 38.

Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

The banking and insurance stand on the same footing. Indian banking has now in recent years made considerable progress and about 40 per cent of the total deposits in banks are claimed by purely Indian Banks now. At present in British India the following Acts of the Indian Legislature regulate this subject:—(1) The Banker's Books Evidence Act 1891, and (2) The Indian Companies Act 1913.

This item seems to be a purely legislative one. In the interest of the economic development of the country as a whole, it is necessary that there should be uniform laws by the Federal legislature for this item.

ITEM 39.

Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

The only part of this item which is applicable to the States is the last phrase of the item relating to police in railway areas. The object of this provision is to enable the police belonging to one unit to act in another where a railway passes through several units. At one time it was considered essential that as regards railways, in the general interests of the country there should be one jurisdiction and uniformity of police control over the whole of India. But they have definitely departed from this position at the Round Table Conference by admitting the possibility of retroceding jurisdiction.

ITEM 41.

The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

Under this item Federal Laws could be passed requiring State Government Officials to attend before the Committees of the Legislature and requiring the production of State Government Documents, which might be confidential documents, before Committees.

But all such laws will have to be subject to any rules made by the Governor-General in his individual judgment under section 28 (4) of the Act. In those rules he has power to safeguard confidential matters from disclosure. Such rules should be made applicable to confidential matters of the States also.

It is understood that a provision in the Instrument of Instructions to the Governor-General might be inserted in order to safeguard the position of the States in regard to this item as contemplated by the provisions of section 28.

ITEM 42.

Offences against laws with respect to any of the matters in this list.

This item empowers the Federation to define and prescribe the punishment for offences against Federal Laws. It does not empower the Federation to deprive a State Court of its jurisdiction. It will enable the Federation to provide for fines, or confiscation of property or goods as a punishment for breach of a Federal Law, and the Federation could by appropriate legislation reserve to itself the right to receive such fines etc. The State Courts might also be bound by any Federal law with respect to any matter in the Federal list (Also see item 53).

ITEM 43.

Inquiries and statistics for the purposes of any of the matters in this list.

The States have suggested a limitation to the effect that the enquiries and statistics referred to in this item should apply only to those matters with respect to which the Federal Legislature had in accordance with the Instrument of Accession power to make laws for the States. The word 'Inquiries' had to be read with the word 'Statistics', and while a limitation restricting subjects on which information might be sought by the Federal Government to those subjects on which the States had federated would probably be constitutionally unobjectionable, its necessity was doubtful. Inquiries by the Federation must ex-hypothesis be inside the federal field. Outside the federal scope, inquiries could only be made in virtue of Paramountcy.

ITEM 45.

Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) **alcoholic liquors for human consumption;**

(*b*) **opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;**

(*c*) **medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.**

Under section 140 of the Act, the obligations are too wide and limitless, and the section referred to brings too many things together. The Provincial Excises are stated under item 140 of the Provincial List. This item clearly includes all agricultural commodities as well and to that extent raises a major problem of delimitation between the Provincial or State's sphere of taxation and the federal sphere. The Federation might wipe out a portion of the land revenue or tax on agricultural income rightly belonging to the Provinces and units by the Federation's action in levying an excise duty on agricultural produce. Had section 140 made it obligatory for the Federation to return the proceeds of excise taxes to the units, the difficulty would have been obviated to a great extent. But it provides that the Federation may retain the whole or the part of such proceeds. There does not seem to be much chances for the units to receive any portion of excise duties under the present financial conditions.

It has been admitted that the levy of excise duties on agricultural or dairy products was almost unthinkable for the reason that it would directly affect the incidence of land revenue which was purely a subject for the unit. A limitation on behalf of the States to that effect will also probably be unobjectionable from the constitutional point of view.

With regard to the claim of the States that no future federal excise duty should be levied unless countervailing duties were levied on the import of articles on which such excise duty was imposed, it has been observed that it was unthinkable that the Federation should tax the indigenous produce of the country without at the same time protecting indigenous producers from foreign competition. On the constitutional side, it is also argued, that any such limitation would be objectionable as an attempt to limit the power of the Federation outside the State.

The States also wish that the existing pooling arrangements in the matter of the excise on matches and mechanical lighters should

continue. But the States had been warned at the time when the pooling arrangement was introduced that it was purely a Provincial arrangement. It seems doubtful whether a limitation to the effect that the arrangements should continue indefinitely under Federation will be acceptable.

ITEM 46.
Corporation tax.

Corporation tax is the only form of direct federal taxation for which the States are expected to federate. It cannot be levied upon private individuals or partnerships however wealthy. It cannot, in any case be levied in the States until ten years have elapsed since the establishment of Federation (Section 139 (a)).

It is defined in section 311. Briefly it may be described as a super-tax on the profit of companies in excess of Rs. 50,000. The present rate is one anna in the rupee subject to a sur-charge of 1/12th. Section 139 gives power to a Ruler to elect that the tax may not be levied in the State, but in lieu thereof a contribution will be paid to the Federation. The amount would be determined in the light of the information supplied by the Ruler to the Auditor General.

The States desire to make a limitation that the Federal Legislature shall not have power to make laws providing for the levying of Corporation Tax on any corporation owned or controlled by and working within the States, or for the inclusion in any contribution made by the States in lieu of Corporation Tax of any sum in respect of the income of any such Corporation. It is also problematic whether the profits of a State Railway extending outside the State would be liable to tax.

ITEM 47.
Salt.

The position of the States in regard to this item depends on their respective treaty rights. The Salt agreements vary with different States and were made on some old basis, whereas the Salt Duty has been varied from time to time and the power to make such variations is kept under section 140 of the New Act.

Out of the total income from salt, the Government of India pays something like 34 lacs to the various Indian States while about

31 lacs are paid to the Provinces for various reasons. In view of the fact that duties on salt are included under section 140 and that a portion of the income from salt is payable to the units in accordance with the principles of distribution, to be laid down by the Federal Legislature, it may be possible to get some amount by way of distribution.

It is suggested that the States which receive compensation under the Salt agreement should press that it should not be taken into account for purposes of section 147 (6). The existing payments which the States receive on account of the prohibition of the manufacture of salt should be entered in the List of rights which the States will have protected by the Governor General in the exercise of his special responsibility.

ITEM 53.

Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

This item consists of three parts:—

(*a*) The Jurisdiction and powers of all courts except the Federal Court in regard to all matters in List I.

(*b*) The enlargement of the appellate jurisdiction of the Federal Court to the extent permitted by Part IX of the Act.

(*c*) The conferring on the Federal Court of supplemental powers to the extent permitted by Part IX.

The section in Part IX of the Act dealing with the enlargement of the appellate jurisdiction by Federal Legislation is expressly confined to appeals from British High Courts and therefore part (b) is not applicable to the States.

As regards Part (c), it seems to correspond with section 215 of the Act, which provides for the ancillary powers of the Federal Court. In his opinion to the Chamber of Princes, Mr. Morgan says, "As regards the operation of section 215 enabling the Federal Legislature to confer ancillary powers upon the Federal Court, I agree with the view expressed in the Hyderabad Memorandum

that it does not enable the legislature to enlarge the powers of the Federal Court unless the States accept Item number 53 of the Federal Legislative List and even so, any powers conferred must be supplement to and not inconsistent with the provisions of the Act". Section 6 of the Act also does not impose any obligation on the Ruler to confer any jurisdiction on their State Courts. It merely requires them to see that "Due effect is given to the provisions of the Act, so far as they are applicable therein by virtue of the Instrument of Accession".

If the States accept only Part (c) of this item, they commit themselves to nothing more than acceptance of legislation designed to enable the Federal Court to exercise more effectively the appellate jurisdiction which that court is entitled to exercise under the Act. It is also necessary that the Federal Court should enjoy such supplemental powers as would enable it to ensure the smooth and efficient working of all courts at adjudicating upon Federal Issues.

It is suggested that the present item does not include the constitution, organisation and fees of State Courts, the same being covered by items 1 and 2 of List II and item 16 of List III. It is also said that by acceding to item 42, the States are bound to confer on their State Courts such jurisdiction and powers as are necessary to adjudicate upon offences under the Federal Laws in virtue of section 122 read with section 6 (1) (b). Section 122 has nothing to do with the exercise of either the legislative power or the judicial power of the Federation. It speaks only of executive authority and requires the Ruler to exercise it in such a manner as to secure respect for Federal Laws. As regards item 42, if its acceptance were to make it obligatory for the States to accept item 53 also, it would have been unnecessary to insert item 53 at all. But the insertion of item 53 was in fact necessary, because the acceptance by a State of a power in the Federal Legislature to provide for the punishment of offences against the Federal Laws does not imply any obligation on the part of State Courts to enforce Federal Laws. Such an obligation will conflict with the fundamental federal principle that State courts cannot be compelled to act as the Agent of the Federal Power.

The J. P. C. Report says that the effect of item 53 would be to enable the Federal Legislature, "to deprive the High Court of

much of their jurisdiction and to transfer it to courts of an inferior status to the grave prejudice of the rights of His Majesty's subjects in British India". This is equally possible in the case of the High Court of the Federated States if this item is accepted without reservation. The Joint Committee suggested the inclusion of a special provision in the Instrument of Instruction directing the Governor-General to reserve for His Majesty's pleasure "Any Bill which in his opinion would so derogate from the powers of the courts as to endanger their position." (J. P. C. Para 334). If such a safeguard was considered necessary for the High Courts in the Provinces, it is no less necessary that the State High Courts should be similarly protected. It is also undoubtedly true that the inclusion of this item in the Instrument of Accession might be considered necessary by the Government of India on account of considerations of policy, finance and uniformity. Financial considerations do justify Federal Control over State Courts, because in its absence the only alternative left to the Federation would be to establish federal circuit courts separately, involving their maintenance out of federal revenues. Such a dual system has been found to bring some serious evils in its train in the experience of other federations in the world. It unnecessarily duplicates the judicial machinery, it enormously increases the expenditure on administration of justice and it also gives rise to a large crop of questions of jurisdiction causing trouble and delay to litigants and lawyers.

ITEM 55.

Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

The Act does not provide for the distribution amongst units of any portion of the revenues from this particular item. The States have also consistently objected to pay into the federal fisc any direct taxes except Corporation Tax. It would, therefore, not at all be unreasonable for the States not to specify this item in the Instrument of Accession.

ITEM 56.

Duties in respect of succession to property other than agricultural land.

ITEM 57.

The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

ITEM 58.

Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

As the proceeds of the taxes mentioned in these items will from the outset go wholly to the contributing units and nothing will be retained by the Federal Government, there need not be any objection to the States accepting these items, in spite of the fact that the States are not committed so far to accepting any item after item 47. It is, however, apprehended that the States might have to pay taxes under section 137 and at the time of redistribution, the amounts payable to the States may be detained by the Federation on account of a set-off under section 149. On the other hand, the treatment of these items as subject for federal legislation will lead to the great advantage of uniform rates of taxation throughout the Federation and avoidance of discrimination arising out of the existence of differential rates in certain units. The framers of the Act apparently thought that there would be no objection on the part of the States to such an arrangement, because section 137 does not contain a provision corresponding to that in section 138 (3) in regard to the emergency sur-charge on income tax.

ITEM 59.

Fees in respect of any of the matters in this list, but not including fees taken in any Court.

Where an item itself is accepted as a subject of Federal Legislation, the connected revenue and fees should prima facie go to the Federal Government; and though there is no legal bar to the request for a stipulation in the Instrument of Accession to the effect that the item is accepted as one for legislation by the Federal Legislature subject to the limitation that any revenue derived from the item should go to a State, the Crown will have to

be satisfied that the request is a reasonable one and that it is not inconsistent with the scheme of federation embodied in the Act. If the States federate at all on any of the items in the federal legislative List, it is difficult to construe the provisions of the Act so as to enable the States to escape the levy of fees in respect of them, unless they make a specific reservation with regard to each item on which they wish to federate. Indeed, it is a mere accident that this item has been mentioned separately. Fees levied under many of the administrative heads are more in the nature of a charge to defray the costs than in the nature of a tax.

APPENDIX I.

FIRST SCHEDULE

TO

ACT, 1935, GOVERNMENT OF INDIA

Part II

REPRESENTATIVES OF INDIAN STATES.

1. The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats", and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

2. In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or to that group of States.

3. In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States.

4. A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he—

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(ii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age:

Provided that—

(*a*) the Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the

establishment of the Federation was by reason of his minority not exercising ruling powers, that Sub-paragraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(*b*) Sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

5. Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

6. Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of Seats,—

(i) the Rulers of States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

(ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat:

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

(i) in the case of a person appointed to fill a seat in the Council of State—

(*a*) by the Ruler of a State entitled to separate representation, nine years;

(*b*) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years;

(*c*) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;

(*d*) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period;

(*e*) in any other manner, three years; and

(ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly:

Provided that—

(i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

(*a*) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and

(*b*) in the case of the Ruler of Pudukkottai, for three years.

9. Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed:

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the

Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons, not exceeding one-half of the number of seats so unfilled to be additional members of that Chamber:

Provided that the right to appoint such additional members shall not be exercised after the expiration of twenty years from the establishment of the Federation.

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

11. Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation:

Provided that—

(*a*) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled; and

(*b*) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and

(*c*) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled.

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats:—

(a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty-five,

were included in the Western India States Agency, the Gujrat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion ;

(*b*) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups;

(*c*) A seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation ;

(*d*) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly:

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(*e*) seats in the Federal Assembly of Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

13. His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do—

(*a*) With a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled ; or

(*b*) With a view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of in rotation, and is

satisfied that such variation will not adversely affect the rights and interest of any State :

Provided that a State mentioned in paragraph eight of this Part of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine.

Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Sechedule to the Table shall be construed as references to the Table as so varied.

14. In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(*a*) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect ;

(*b*) the filling of casual vacancies in seats ;

(*c*) the decision of doubts or disputes arising out of or in connection with any appointment ; and

(*d*) The manner in which the rules are to be carried into effect.

In this Part of this Schedule the expression "prescribed" means prescribed by His Majesty in Council or by rules made under this paragraph.

15. For the purposes of Sub-section (2) of section five of this Act.

(i) if the Rulers of at least one-half of the States included in any group to which one seat in the Council of State is allotted accede to the Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State;

(ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to

appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

(iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seats or, if it is one of the States comprised in the said Division XVII of the Table, such figure as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

TABLE OF SEATS.

The Council of State and the Federal Assembly.

Representatives of Indian States.

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division I.		
Hyderabad	5	**Hyderabad**	16	14,436,148
		Division II.		
Mysore	3	**Mysore**	7	6,557,302
		Division III.		
Kashmir	3	**Kashmir**	4	3,646,243
		Division IV.		
Gwalior	3	**Gwalior**	4	3,523,070
		Division V.		
Baroda	3	**Baroda**	3	2,443,007
		Division VI.		
Kalat	2	**Kalat**	1	342,101
		Division VII.		
Sikkim	1	**Sikkim**	—	109,808
		Division VIII.		
1. Rampur	1	1. **Rampur**	1	465,225
2. Benares	1	2. **Benares**	1	391,272
		Division IX.		
1. Travancore	2	1. **Travancore**	5	5,095,973
2. Cochin	2	2. **Cochin**	1	1,205,016
3. Pudukkottai	1	3. **Pudukkottai**		400,694
Banganapalle		**Banganapalle**	1	39,218
Sandur		**Sandur**		13,583
		Division X.		
1. Udaipur	2	1. **Udaipur**	2	1,566,910

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division X (*Contd.*)		
2. Jaipur	2	2. **Jaipur**	3	2,631,775
3. Jodhpur	2	3. **Jodhpur**	2	2,125,982
4. Bikaner	2	4. **Bikaner**	1	936,218
5. Alwar	1	5. **Alwar**	1	749,751
6. Kotah	1	6. **Kotah**	1	685,804
7. Bharatpur	1	7. **Bharatpur**	1	486,954
8. Tonk	1	8. **Tonk**	1	317,360
9. Dholpur	1	9. **Dholpur**	1	254,986
10. Karauli	1	**Karauli**		140,525
11. Bundi	1	10. **Bundi**	1	216,722
12. Sirohi	1	**Sirohi**		216,528
13. Dungarpur	1	11. **Dungarpur**	1	227,544
14. Banswara	1	**Banswara**		260,670
15. Partabgarh Jhalawar	1	12. **Partabgarh Jhalawar**	1	76,539 107,890
16. Jaisalmer Kishengarh	1	13. **Jaisalmer Kishengrah**	1	76,255 85,744
		Division XI.		
1. Indore	2	1. **Indore**	2	1,325,089
2. Bhopal	2	2. **Bhopal**	1	729,955
3. Rewa	2	3. **Rewa**	2	1,587,445
4. Datia	1	4. **Datia**	1	158,834
5. Orchha	1	**Orchha**		314,661
6. Dhar	1	5. **Dhar**		243,430
7. Dewas (Senior) Dewas (Junior)	1	**Dewas (Senior)** **Dewas (Junior)**	1	83,321 70,513
8. Jaora Ratlam	1	6. **Jaora Ratlam**	1	100,166 107,321
9. Panna Samthar Ajaigarh	1	7. **Panna Samthar Ajaigarh**	1	212,130 33,307 85,895
10. Bijawar Charkhari Chhatarpur	1	8. **Bijawar Charkhari Chhatarpur**	1	115,852 120,351 161,267

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division XI (*Contd.*)		
11. Baoni, Nagod, Maihar, Baraundha	1	9. **Baoni, Nagod, Maihar, Baraundha**	1	19,132 74,589 68,991 16,071
12. Barwani, Ali Rajpur, Shahpura	1	10. **Barwani, Ali Rajpur, Shahpura**	1	141,110 101,963 54,233
13. Jhabua, Sailana, Sitamau	1	11. **Jhabua, Sailana, Sitamau**	1	145,522 35,223 28,422
14. Rajgarh, Narsingarh, Khilchipur	1	12. **Rajgarh, Narsingarh, Khilchipur**	1	134,891 113,873 45,583
		Division XII.		
1. Cutch	1	1. **Cutch**	1	514,307
2. Idar	1	2. **Idar**	1	262,660
3. Nawanagar	1	3. **Nawanagar**	1	409,192
4. Bhavnagar	1	4. **Bhavnagar**	1	500,274
5. Junagadh	1	5. **Junagadh**	1	545,152
6. Rajpipla, Palanpur	1	6. **Rajpipla, Palanpur**	1	206,114 264,179
7. Dhrangadhra, Gondal	1	7. **Dhrangadhra, Gondal**	1	88,961 205,846
8. Porbandar, Morvi	1	8. **Porbandar, Morvi**	1	115,673 113,023
9. Radhanpur, Wankaner, Palitana	1	9. **Radhanpur, Wankaner, Palitana**	1	70,530 44,259 62,150
10. Cambay, Dharampur, Balasinor	1	10. **Cambay, Dharampur, Balasinor**	1	87,761 112,031 52,525
11. Baria, Chhota Udepur, Sant, Lunawada	1	11. **Baria, Chhota Udepur, Sant, Lunawada**	1	159,429 144,640 83,531 95,162

1. States and Groups of States.	2. Number of seats in Council of State	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division XII (*Contd.*)		
12. Bansda, Sachin, Jawahar, Danta	1	12. **Bansda, Sachin, Jawahar, Danta**	1	48,839 22,107 57,261 26,196
13. Dhrol, Limbdi, Wadhwan, Rajkot	1	**Dhrol, Limbdi, Wadhawan, Rajkot**		27,639 40,088 42,602 75,540
		Division XIII.		
1. Kolhapur	2	1. **Kolhapur**	1	957,137
2. Sangli, Savantvadi	1	2. **Sangli, Savantvadi**	1	258,442 230,589
3. Janjira, Mudhol, Bhor	1	3. **Janjira, Mudhol, Bhor**	1	110,379 62,832 141,546
4. Jamkhandi, Miraj (Senior), Miraj (Junior), Kurundwad (Senior), Kurundwad (Junior)	1	4. **Jamkhandi, Miraj (Senior), Miraj (Junior), Kurundwad (Senior), Kurundwad (Junior)**	1	114,270 93,938 40,684 44,204 39,583
5. Akalkot, Phaltan, Jath, Aundh, Ramdurg	1	5. **Akalkot, Phaltan, Jath, Aundh, Ramdrug**	1	92,605 58,761 91,099 76,507 35,454
		Division XIV.		
1. Patiala	2	1. **Patiala**	2	1,625,520
2. Bhawalpur	2	2. **Bhawalpur**	1	984,612
3. Khairpur	1	3 **Khairpur**	1	227,183
4. Kapurthala	1	4. **Kapurthala**	1	316,757
5. Jind	1	5. **Jind**	1	324,676
6. Nabha	1	6. **Nabha**	1	287,574
		7. **Tehri-Garhwal**	1	349,573

1. States and Groups of States	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division XIV (*Contd.*)		
7. Mandi	1	8. **Mandi**	1	207,465
Bilaspur		**Bilaspur**		100,994
Suket		**Suket**		58,408
8. Tehri-Garhwal	1	9. **Sirmur**	1	148,568
Sirmur		**Chamba**		146,870
Chamba				
9. Faridkot	1	10. **Faridkot**	1	164,364
Malerkotla		**Malerkotla**		83,072
Loharu		**Loharu**		23,338
		Division XV.		
1. Cooch Behar	1	1. **Cooch Behar**	1	590,886
2. Tripura	1	2. **Tripura**	1	382,450
Manipur		3. **Manipur**	1	445,606
		Division XVI.		
1. Mayurbhanj	1	1. **Mayurbhanj**	1	889,603
Sonepur		2. **Sonepur**	1	237,920
2. Patna	1	3. **Patna**	1	566,924
Kalahandi		4. **Kalahandi**	1	513,716
3. Keonjhar	1	5. **Keonjhar**	1	460,609
Dhenkanal		6. **Gangpur**	1	356,674
Nayagarh		7. **Bastar**	1	524,721
Talcher		8. **Surguja**	1	501,939
Nilgiri				
4. Gangpur	1	9. **Dhenkanal**	3	284,326
Bamra		**Nayagarh**		142,406
Seraikela		**Seraikela**		143,525
Baud		**Baud**		135,248
Bonai		**Talcher**		69,702
5. Bastar	1	**Bonai**		80,186
Surguja		**Nilgiri**		68,594
Raigarh		**Bamra**		151,047
Nandgaon				

1. States and Groups of States.	2. Number of seats in Council of State.	3. States and Groups of States.	4. Number of seats in the Federal Assembly.	5. Population.
		Division XVI (*Contd.*)		
6. Khairagarh, Jashpur, Kanker, Korea, Sarangarh	1	10. **Raigarh** **Khairagarh** **Jashpur** **Kanker** **Sarangarh** **Korea** **Nandgaon**	3	277,569 157,400 193,698 136,101 128,967 90,886 182,380
		Division XVII.		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule.	2	**States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this part of this Schedule.**	5	3,032,197
Total population of the States in this Table.				**78,981,912**

SECOND SCHEDULE

TO

ACT, 1935, GOVERNMENT OF INDIA.

PROVISION OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE.

Part I, in so far as it relates to the Commander-in-Chief.

Part II, Chapter II save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of ministers, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled to act in his discretion or exercise his individual judgment; the functions of the Governor-General with respect to external affairs and defence; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instructions to the Governor-General; the Superintendence of the Secretary of the State; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

Part II, Ch. III, save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen; the disqualifications for membership of a Chamber of the Federal Legislature

in relation to the representatives of the States; the procedure for the introduction and passing of Bills; joint sittings of the two Chambers; the assent to Bills, or the withholding assent from Bills, by the Governor-General; the reservation of Bills for the signification of His Majesty's pleasure; the annual financial statement; the charging on the revenues of the Federation of the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; supplementary financial statements; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part II, Ch. IV, save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.

Part III, Ch. I. The whole chapter.

Part III, Ch. II, save with respect to the special responsibilities of the Governor relating to the rights of Indian States and

the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to those responsibilities.

Part III, Ch. III, save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part III, Ch. IV. The whole chapter.

„ Ch. V. „

„ Ch. VI. „

Part IV. The whole Part.

Part V, Ch. I, save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.

Part V, Ch. II, save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.

Part V, Ch. III. The whole chapter.

Part VI, save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.

Part VII, Ch. I,	in so far as it relates to Burma.
Part VII, Ch. II,	save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.
Part VII, Ch. III,	save in so far as it affects suits against the Federation by a Federated State.
Part VIII,	save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.
Part IX, Ch. I,	in so far as it relates to appeals to the Federal Court from High Courts in British India; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.
Part IX, Ch. II.	The whole chapter.
Part X,	save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.
Part XI.	The whole Part.
Part XII,	save with respect to the saving for rights and obligations of the Crown in its relations with Indian States; the use of His Majesty's forces in connection with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature or any Provincial Legislature recommending amendments of this Act or orders in council made thereunder; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.
Part XIII.	The whole Part.
First Schedule.	The whole Schedule, except Part II thereof.
Third Schedule.	The whole Schedule.

Fourth Schedule,	save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.
Fifth Schedule.	The whole Schedule.
Sixth Schedule.	,,
Seventh Schedule.	Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.
Eighth Schedule.	The whole Schedule.
Ninth Schedule.	,,
Tenth Schedule.	,,

SEVENTH SCHEDULE

TO

ACT, 1935, GOVERNMENT OF INDIA

Legislative Lists.

LIST I.

FEDERAL LEGISLATIVE LIST.

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation

of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as under-

taken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the Capital of Companies

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II.

PROVINCIAL LEGISLATIVE LIST.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Provinces or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possesion of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums, and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public Health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, includidg taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST.

Part I.

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators—general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

Part II.

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such water-ways; carriage of passengers and goods on inland water-ways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

APPENDIX II.

DRAFT INSTRUMENT OF ACCESSION.

INSTRUMENT OF ACCESSION OF .....

(insert full name and title)

WHEREAS proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States.

AND WHEREAS those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States.

AND WHEREAS provision for the constitution of a Federation of India has now been made in the Government of India Act, 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by Proclamation declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation.

AND WHEREAS the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation.

NOW THEREFORE

I.....

(insert full name and title)

(Ruler of .....) (insert name of State)

In the exercise of my sovereignty in and over my said State.

For the purpose of co-operating in the furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces called Governors' Provinces and with the Provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States.

DO hereby execute this my INSTRUMENT OF ACCESSION and

1. I HEREBY DECLARE that subject to His Majesty's acceptance of this instrument, I accede to the Federation of India as established under the Government of India Act, 1935 (hereinafter referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal Authority established for the purposes of the Federation shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to the State of ..... (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

2. I HEREBY ASSUME the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I ACCEPT the matters specified in the First Schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State, and in this Instrument and in the said First Schedule I specify the limitations to which the power of the Federal Legislature to make laws for this State, and the exercise of the executive authority of the Federation in this State, are respectively to be subject.

Whereunder the First Schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that Schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation.

4. THE particulars to enable due effect to be given to the provisions of Sections 147 and 149 of the Act are set forth in the Second Schedule hereto.

5. REFERENCES in this Instrument to laws of the Federal Legislature include references to Ordinances promulgated, Acts enacted and laws made by the Governor-General of India under Sections 42 to 45 of the Act inclusive.

6. NOTHING in this Instrument affects the continuance of my sovereignty in and over this State or, save as provided by this

Instrument or by any law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and rights in and over this State.

7. *NOTHING* in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect.

Provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the Second Schedule thereto, and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment; but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which, by virtue of this Instrument, are exercisable by His Majesty or any Federal authority in relation to this State.

8. THE Schedules hereto annexed shall form an integral part of this Instrument.

9. THIS Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the day of Nineteen hundred and , this Instrument shall, on that day, become null and void for all purposes whatsover.

10. I HEREBY DECLARE that I execute this Instrument for myself, my heirs and successors, and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors.

THIS INSTRUMENT OF ACCESSION (*then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler*).

Additional Paragraphs for Insertion in Proper Cases.

A. WHEREAS I am desirous that functions in relation to the Administration in this State of laws of the Federal Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the Schedule hereto:

NOW THEREFORE I hereby declare that I accede to the Federation with the assurance that the said agreement will be

executed and the said agreement when executed shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

B. THE provisions contained in Part VI of the Act with respect to interference with water supplies, being Sections 130 to 133 thereof inclusive, are not to apply in relation to this State.

C. WHEREAS notice has been given to me of His Majesty's intention to declare in signifying his acceptance of this my Instrument of Accession that the following areas.

. . . . . .

. . . . . .

are areas to which it is expedient that the provisions of subsection (1) of Section 294 of the Act should apply:

NOW THEREFORE I hereby declare that this Instrument is conditional upon His Majesty making such a declaration.

APPENDIX III.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL.

Whereas by Letters Patent bearing even date we have made effectual and permanent provision for the Office of Governor-General of India:

And whereas by those Letters Patent and by the Act of Parliament passed on (2nd August 1935) and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the Government of India and of our Federation of India are declared to be vested in the Governor-General as our Representative:

And whereas, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from our Secretary of State, and to the duty of our Governor-General to give effect to any instructions so received, we are minded to make general provision regarding the manner in which our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which we have reposed in him:

And whereas by the said Act it is provided that the draft of any such Instructions to be issued to our Governor-General shall be laid by our Secretary of State before both Houses of Parliament:

And Whereas both Houses of Parliament, having considered the draft laid before them accordingly, have presented to us an Address praying that Instructions may be issued to our Governor-General in the form which hereinafter follows:

Now therefore we do by these our Instructions under our Sign Manual and Signet declare our pleasure to be as follows:—

A.—INTRODUCTORY

I. Under these our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General

according to the provisions of our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause our Commission under our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. *Our said Governor-General shall take the oath of* allegiance and the oath for the due execution of the Office of our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And we do authorise and require our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And we do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to our service and to the security of India by the absence of our Governor-General, he shall not quit India during his term of office without having first obtained leave from us under our Sign Manual or through one of our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE FEDERATION.

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, cooperation and good-will among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers our Governor-General shall use his best endeavours to select his

Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, not withstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is our will and pleasure that in the discharge of his special responsibilities for safeguarding the financial stability and credit of the Federation our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is

accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these our Instructions, unless he is fully satisfied that modification of that policy is essential in the interest of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests our Governor-General shall be careful to safeguard the members of our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V (which deals with discrimination) of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, our Governor-General shall avoid action which would affect the competence of his Government and of the Federal

Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measure which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates, our Governor-General shall bear always in mind the partnership between India and the United kingdom within our Empire, which has so long subsisted, and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government our Governor-General shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal

by any other Minister which affects the finances of the Federation; and further that no reappropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal, the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is our will and pleasure that our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the defence of India must to an increasing extent be the concern of the Indian people it is our will in special that our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to our Indian Forces, or the employment of our Indian Forces on service outside India.

XVIII. Further, it is our will and pleasure that, in the administration of the Department of Defence, our Governor-General shall obtain the views of our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to our Secretary of State whenever the Commander-in-Chief may so request on any occasion when our Governor-General communicates with our Secretary of State upon them.

XIX. And we desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—IN REGARD TO RELATIONS BETWEEN THE FEDERATION, PROVINCES AND FEDERATED STATES.

XX. *Whereas it is expedient, for the common good of* provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession:

And whereas in the interest of the harmonious co-operation of the several members of the body politic, the said Act has empowered our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is our will and pleasure that our Governor-General, in the exercise of these powers, should give unbiassed consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or Federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is our desire that our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further our will and pleasure that our Governor-General shall endeavour to secure the co-operation of the Governments of Provinces and Federated States in the maintenance of such Federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular we require our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of money assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such a loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended

to the said Act, it is our will and pleasure that our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of Federal law, our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those Codes of law through which uniformity of legislation has hitherto been secured.

D.—MATTERS AFFECTING THE LEGISLATURE.

XXVII. Our Governor-General shall not assent in our name to, but shall reserve for the signification of our pleasure, any bill of any of the classes herein specified, that is to say :—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill;

(*c*) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(*d*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act (which deals with discrimination).

XXVIII. It is further our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act (the establishment of Provincial Autonomy), our Governor-General in notifying his assent in our name to any Act of the Legislature of

the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam.

XXIX. It is our will that the power vested by the said Act in our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is our will and pleasure that, in choosing, the representatives of British India for the seats in the Council of State which are to be filled by our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women; and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall, so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British India representatives of the Federal Assembly.

E.—GENERAL.

XXXI. And finally, it is our will and pleasure that our Governor-General should so exercise the trust which we have reposed in him that the partnership between India and the United Kingdom within our Empire may be furthered, to the end that India may attain its due place among our Dominions.

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