



Government of India Bill.

(INDIAN REPRINT.)

PUBLISHED BY MANAGER OF PUBLICATIONS, DELHI.
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.
1935.

(Twelve annas.)

STOCKTAKING-2011

R 342 5409

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Government of India Bill.

FINANCIAL MEMORANDUM.

It is proposed in this Bill to make provision for the transfer to Votes of Parliament of the expenses of the Establishment of the Secretary of State (Clauses 264 (5), 266 (1), 267 (2), (3), (5) and (6), 431 (5) and 432 (3)). Provision is made for the payment of contributions from the revenues of India and Burma in respect of so much of the expenses of the India Office as is attributable to the performance on behalf of India and of Burma of such agency functions as it may be agreed between the Secretary of State and the Governor-General of India and the Governor of Burma that the India Office should perform. The amount of the contribution payable in this regard will be agreed between the Governor-General and the Treasury (Clause 266 (3)) and the Governor of Burma and the Treasury (Clause 432 (1)). A contribution will also be made from the revenues of India in respect of the superannuation allowances, etc., of the India Office staff transferred (Clause 268 (1)).

This proposal gives effect to the suggestion made in paragraph 389 of the Report of the Joint Committee on Indian Constitutional Reform and reverses the present arrangement under which the expenses of the India Office are a charge on the revenues of India, an annual grant in aid being made towards those expenses from British revenues. This grant is at present £110,000 a year, a figure which represents broadly the cost of the administrative functions of the India Office, as distinct from the agency functions which it performs on behalf of the Governments in India.

The total present annual cost of the India Office Establishment on account of salaries, pensions and contingencies is estimated as follows:—

	£
Salaries and wages	198,000
Pensions	62,000
Contingencies, stationery, printing, book-binding, postage and telegrams to India, National Health Insurance, law charges	32,000
Total	292,000
Present annual grant in aid from British revenues	110,000
Net charge on Indian revenues	182,000

Until the Secretary of State, the Governor-General of India and the Governor of Burma have agreed upon the functions which the India Office shall in future perform on behalf of the Governments in India and the Government of Burma, it is not possible to give an exact estimate of the net charge which will fall on British revenues from the proposal, but it is not anticipated that this charge will differ materially from the present figure of £110,000.

As from the date when Aden ceases to be a part of British India (for which provision is made in Clause 270 (1) of this Bill) the present Indian contribution towards military and political expenditure in Aden will cease. This contribution is fixed at one-third of such expenditure and is therefore a varying figure, but is subject to the provision that it shall not exceed £150,000 a year.

Government of India Bill.

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THIRTEENTH SCHEDULE.—Forms of Oaths or Affirmations.

FOURTEENTH SCHEDULE.—The Burma Railway Board.

FIFTEENTH SCHEDULE.—Enactments repealed.

Why no preamble? "There is no need for a preamble in this case as no new pronouncement of policy or intention is required. The preamble to the Act of 1919 was described by the Joint Committee in their report as having 'set out in plain and definitely the ultimate aims of British rule in India'. The position of Government is this. We stand firmly by the ~~old~~ pledge contained in the 1919 preamble B I L L which it is not a part of their plan to repeal, and by the interpretation put by the viceroy in 1929 for the authority of the Govt. of the day in that preamble that

Make further provision for the government of India.

A. D. 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,
 5 as follows:—

PART I.

INTRODUCTORY.

1. This Act may be cited as the Government of India Short title, Act, 1935.
- 10 2.—(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of his territories in India, and all rights, authority and jurisdiction exercisable by him by treaty, grant, usage, sufferance or otherwise, 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.
- 15
- 20 (2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India

Government of India by the Crown.

"The natural issue of India's progress as there contemplated is the attainment of Dominion status." There is, therefore, no need to enshrine in an Act words and phrases, which are already contained in the declaration of intent.

A. D. 1935.

PART I.
—cont.The Governor
General of
India and His
Majesty's
Representa-
tive as
regards rela-
tions with
Indian
States.

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.

3.—(1) The Governor-General of India is appointed 5
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 10
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 15
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 20
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 Com-
mander-in-
Chief in
India.

4. There shall be a Commander-in-Chief of His 25
Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

PART II.

THE FEDERATION OF INDIA.

CHAPTER I.

30

ESTABLISHMENT OF FEDERATION AND ACCESSION OF
INDIAN STATES.Proclamation
of Federation
of India.

5.—(1) 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 herein- 35
after 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' 40
Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation ;

A. D. 1935.

PART II.
— cont.

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States—

10 (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

15 (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.

* 6.—(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of a (declaration made) by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

Accession of
Indian
States.

See pp 64-66. (a) declares that he accepts this Act as applicable to his State and to his subjects, with the intention 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 exercise in relation to his State and to his subjects such functions as may be vested in them by or under this Act ;

30 (b) specifies which of the matters mentioned in the Federal Legislative List he accepts as matters with respect to which the Federal Legislature may make laws for his State and his subjects, and specifies any condition to which his acceptance of any such matter is to be deemed to be subject ; and

35

(c) assumes the obligation of ensuring that due effect is given to this Act within his State :

40 Provided that a declaration may be made conditionally on the establishment of the Federation

* See the speech of the Maharajah of Patiala, the Chancellor of the Chamber of Princes at the plenary session of the Round Table Conference, 19th Jan. 1931. Proceedings, p. 421.

*proved their willingness to make the sacrifices of
Sovereignty which they will necessarily entail.*
Government of India. [25 GEO. 5.]

A. D. 1935.

PART II.
—cont.

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) A Ruler may by a supplementary declaration 5 made to and accepted by His Majesty declare his willingness to accept conditionally or otherwise any other matter as a matter with respect to which the Federal Legislature may make laws in relation to his State and the subjects thereof, or his willingness to waive in whole or 10. in part any condition specified in a previous declaration made by him.

(3) A declaration shall not be valid unless it is the declaration of the Ruler himself, but, subject as afore- said, references in this Act to the Ruler of a State include 15 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.

(4) The validity of any declaration under this section shall not be affected by any amendment of 20 the provisions of this Act mentioned in the Second Schedule to this Act, but no such amendment shall in any case be construed as extending to a Federated State without the concurrence of the Ruler of that State.

(5) After the establishment of the Federation the 25 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 30 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.

(6) In this Act a State which has acceded to the 35 Federation is referred to as a Federated State, and the declaration by virtue of which a State has so acceded, construed together with any supplementary declaration made under this section, is referred to as the Instrument of Accession of that State. 40

(7) An Instrument of Accession may contain provisions with respect to any subject not mentioned in this section, being a subject with respect to which this Act expressly authorises provision to be made by the Instrument of Accession of a State.

A. D. 1935.

Part II.
—cont.

(8) All courts shall take judicial notice of every Instrument of Accession.

(9) In this section the expression "the Federal Legislative List" means the list of matters with respect to which under Part V of this Act, the Federal Legislature has, but a Provincial Legislature has not, power to make laws.

* Sir Henry Page Croft (C. Brownworth) moved an amendment in the Committee stage of the bill that subjects of Statutory become this day CHAPTER II subjects with the Proclamation of the Federation. This was opposed by Sir Dunsford Gordon, the Solicitor-General, and the amendment was withdrawn.

15

The Governor General.

7.—(1) 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 functions 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 other authority.

Functions
of Governor-
General.

(2) 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 I of this Act.

(3) 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 or enabling him to discharge conveniently and with dignity the duties of his office.

A. D. 1935.

PART II.

—cont.

Extent of
executive
authority of
the Federa-
tion.

8. 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 in India ;
- (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—

- An amendment to para c(i) clause 8. proposed by Sir Donald Somervell in the Committee stage of the Bill, made it clear that if a State or the Government of a Province made limitations in the legislative field, those limitations would apply concurrently to the administrative field.*
- (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, or extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws which apply in that State ;
 - (ii) 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 ;
 - (iii) 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 I of this Act or otherwise.

Administration of Federal Affairs.

Council of
ministers.

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 where by or under this Act he is required so to do.

Sir Donald Somervell, Solicitor-General, pointed out that the words "individual judgment" were used [25 GEO. 5.] Government of India. throughout in relation to the Governor-General's
(2) The Governor-General in his discretion may A.D. 1935.
preside at meetings of the council of ministers.

PART II.
—cont.

(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.

10.—(1) 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. Other provisions as to ministers.

(2) 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.

(3) 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:

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

(4) 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.

30 (5) 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.

35 11.—(1) 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. Provisions as to external affairs, defence and ecclesiastical affairs.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not individual action within the area in which he would normally act on the advice of his ministers as

* *known Govt. wished to make changes, this might be impeded by the House of Lords. Sir Samuel Hoare in reply said that important changes should only be possible through an amending Bill or formal resolution*

A.D. 1935.
PART II.
—cont.

exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

Special responsibilities of Governor-General.

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

See Subsection 4 of clause 17 in this connection.

- (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; 10
- (c) the safeguarding of the legitimate interests of minorities;
- (d) the securing to members of the public services of any rights provided for them by or under this Act and the safeguarding of their legitimate interests; 15
- (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; 20
- (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; 25
- (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. 30

Not the goods of the dominions or Colonies.

(2) 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. 35

Provisions as to Instrument of Instructions.

* 13.—(1) 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. 40

* *Mr. Morgan Jones proposed an amendment in the Committee stage of the Bill (March 3, 1935) for omitting the stipulation that address by both Houses was necessary for further proceedings in relation to the Governor-General.*

Mr. J. S. Cockfield (Labour) pointed out in the House of Commons on Feb. 18, 1935, that with other Dominions, Constitution and developments were made by altering the instruments
[25 GEO. 5.] *Government of India.*

Details of Instructions, but in the case of India such alterations
and no further proceedings shall be taken in relation A.D. 1935.
thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued. PART II.
—cont.

5 (2) 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.

10 14. 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, subject to the provisions of any Instrument of Instructions issued to him by His Majesty, be under the general control of, and comply with such particular directions, if any, as
15 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.

20 15.—(1) The Governor-General may appoint a person to be his financial adviser. *(See Subsection 4 of clause 17)* Superintendence of Secretary of State.
Financial adviser to Governor-General.

(2) 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
25 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.

(3) The Governor-General's financial adviser shall
30 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.

35 (4) 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
40 discretion:

Provided that if the Governor-General has determined to appoint a financial adviser, he shall, before

would need the authority of both Houses of Parliament. He contended that while the House of Lords existed, it would be impossible for a Minister to appoint a financial adviser without the consent of the House of Lords.

A.D. 1935.

PART II.
—cont.

making any appointment other than the first appointment, consult his ministers as to the person to be selected.

Advocate-General.

16.—(1) The Governor-General shall appoint a person to be Advocate-General for the Federation. 5

(2) 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, and in the performance of his duties he shall have right of audience in all courts in British India and in any Federated State. 10

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine. 15

(4) 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. 20

Conduct of
business of
Federal
Government.

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

(2) 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 the making thereof was not duly authorised. 25 30

(3) 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. 35

(4) 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 40

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 Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General. A.D. 1935.
PART II.
—cont.

(5) In the discharge of his functions under this section the Governor-General shall act in his discretion after consultation with his ministers.

10

CHAPTER III.

THE FEDERAL LEGISLATURE.

General.

18.—(1) 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”). Constitution
of the
Legislature.

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not exceeding 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.

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

(4) 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.

(5) 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.

19.—(1) 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. Sessions of
the Legisla-
ture, proro-
gation and
dissolution.

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PART II.
—cont.

(2) 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; 5
- (b) prorogue the Chambers;
- (c) dissolve the Federal Assembly.

(3) 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. 10

Right of
Governor-
General to
address
Chambers.

20.—(1) 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. 15

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take 20 into consideration.

Rights of
ministers and
counsellors
as respects
Chambers.

21. Every minister and every counsellor 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 25 he may be named a member, but shall not by virtue of this section be entitled to vote.

Election of
officers of
Chambers.

22.—(1) 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 often as 30 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.

(2) A member holding office as President or Deputy-President of the Council of State shall vacate his office if he 35 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 40 purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) 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.

A.D. 1935.
PART II.
—cont.

(4) 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 were respectively payable immediately before the establishment of the Federation to the President and the Deputy-President of the Council of State of the Indian Legislature.

(5) 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 and to the Legislative Assembly of the Indian Legislature for references to the Council and to the Council of State of the Indian Legislature:

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.—(1) 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.

Voting in
Chambers,
power of
Chambers
to act
notwith-
standing
vacancies,
and quorum.

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.

(2) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the

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PART II.
—cont.

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.

5

(3) 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.

Oath or
affirmation
of members.

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.

15

Vacation of
seats.

25.—(1) No person shall be a member of both Chambers, and rules made by the Governor-General 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.

20

(2) If a member of either Chamber—

(a) ceases to possess any of the qualifications which he was under the provisions of the First Schedule to this Act required to possess when he was chosen a member of the Chamber; or

25

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

30

(c) by writing under his hand addressed to the Governor-General resigns his seat,

his seat shall thereupon become vacant.

(3) 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:

35

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.

40

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

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PART II.

—cont.

Disqualifications for membership.

- 5 (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;
- 10 (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 relating to elections which has been declared by Order in Council or
- 15 by an Act of the Federal Legislature to be an offence conviction whereof is a 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;
- 20 (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
- 25 to transportation or to imprisonment for a period exceeding twelve months, 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.
- 30 (2) 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.
- (3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by
- 35 virtue of paragraph (d) or paragraph (e) of sub-section (1) 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
- 40 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

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PART II.

—cont.

during which his membership is preserved by this subsection he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office or 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.

Penalty for sitting and voting when not qualified or disqualified.

27. If a person sits or votes as a 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.

Privileges &c. of members.

28.—(1) 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.

(2) 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 the members of the Indian Legislature.

(3) 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 power to compel the attendance for any purpose of any person before either Chamber or before both Chambers sitting together.

applied that the Govt. had decided that the clause was unduly restrictive (12.3.35.)

See p. 292
of the Debates
(12th March
1935)
Vol. 299,
No. 56.

①

In the Committee Stage

Maj. G. H. Wilson

(Lab. Sec. 1.5.E)

proposed amendment

of this section

is an outrageous

limitation of the

powers of the

Federal Legislature

Mr. P. A. Butler

(Under Secretary)

or before any committee or officer of the Legislature, A.D. 1935.
 or any punitive or disciplinary powers other than a ^{PART II.}
 power to remove or exclude persons infringing the rules ^{—cont.}
 or standing orders, or otherwise behaving in a disorderly
 5 manner.

For the purposes of this subsection an enactment
 of the Federal Legislature providing for the punishment
 of persons who refuse to attend as aforesaid shall be
 deemed to be an enactment conferring power to compel
 10 the attendance of persons.

(4) 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 other-
 wise take part in the proceedings of, a Chamber as they
 15 apply in relation to members of the Legislature.

29. Members of either Chamber shall be entitled to ^{Salaries and allowances of members.}
 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
 20 at such rates and upon such conditions as were imme-
 diately before the date of the establishment of the Federa-
 tion applicable in the case of members of the Legislative
 Assembly of the Indian Legislature.

Legislative Procedure.

25 * 30.—(1) Subject to the special provisions of this ^{Provisions as to introduction and passing of Bills.}
 Part of this Act with respect to financial Bills, 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
 30 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
 35 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
 40 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.

* Raj Wilmers moved exemption of financial bills from
 clause 30, with a view to ensuring that the Government
 should have the sole word in financial matters.

taxation. He pointed out that this was the recent practice in respect of Dominion's Constitutions. The amendment was negatived by 216 votes to 46. (12.3.35) Government of India. [25 GEO. 5.]

A.D. 1935.

PART II.

—cont.

Joint sittings of both Chambers in certain cases.

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,

5

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:

15

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.

25

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.

30

(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:

40

Provided that if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso

to subsection (1) 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. A.D. 1935.
PART II.
—cont.

5 (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 10 total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

15 (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 20 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 25 such amendments as aforesaid shall be proposed to the Bill and 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 30 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 35 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 : Assent to
Bills and
disallowance
by His
Majesty.

A.D. 1935.

PART II.
—cont.

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. 5

(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 10 the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

* The provision is perhaps necessary from the point of view of the Governor-General. (3) Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months 15 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. 20

Procedure in Financial matters.

Annual
financial
statement.

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 25 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 30 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, 35

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. 40

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

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PART II.

—cont.

- 5 (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;
- 10 (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;
- 15 (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, of the personal and secretarial staffs of the Governor-General and of the staff of the financial adviser;
- 20 (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;
- 25 (e) expenditure for the purpose of the discharge by the Governor-General of his functions 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 forty-two lakhs of rupees, exclusive of pension charges;
- 30
- 35 * (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;
- 40 (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

* Miss E. Rathbone in the Committee stage of the Bill enquired whether the money was to come from the funds of the Federation, or the State concerned, or the Government. Mr. Butler said it would be from the State concerned.

from the federal revenue - (12.3.33)

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PART II.
—cont.

(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.

5

(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.

Procedure of
Legislature
with respect
to estimates.

34.—(1) So much of the estimates of expenditure 10

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 15 estimates relating to expenditure referred to in sub-paragraph (a) or sub-paragraph (f) of subsection (3) of the last preceding section.

See 79th Bill.

See Section 19 of the Govt of India Act, 1919 according to which demands for grants are submitted to the Legislative Assembly.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands 20 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:

25

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 30 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 35 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 40 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.

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PART II.

—cont.

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

5 35.—(1) The Governor-General shall authenticate by his signature a schedule specifying—

Authentica-
tion of
Schedule of
authorised
expenditure.

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

10 (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:

15 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
20 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.

25 * (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
30 specified in the schedule so authenticated.

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
35 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

Supplemen-
tary state-
ment of
expenditure.

* A Resolution was moved and passed that the Schedule mentioned in clause 35 should be discussable by the Legislature. Sir Thomas Inskip undertakes to move it.

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PART II.
—cont.Special
provisions
as to
financial
Bills.

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 impost, whether local or general; or 5
- (b) for authorising 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 10
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure, 15

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. 20

(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. 25

Procedure generally. 30

Rules of
procedure.

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— 35

- (a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any 40

See Section 82
of this Bill.

* Brig. General H. Clayton Brown moved an amendment with a view to preventing discussion in matters relating to defence administration of India and the army. But the amendment was negatived.

matter which affects the discharge of his A.D. 1935. functions in so far as he is by or under this Act PART II. required to act in his discretion or to exercise —cont. his individual judgment;

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

10 * (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 in relation to 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;

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

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

25 *Amendment of Sir Samuel Hoare Gov. in relation to the excluded area; or* (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, the administration of any

30 *division of the area agreed to (13.3.38)* (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;

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.

35 (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.

40 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.

* Sir Henry Page Croft (C. Government) moved an amendment to Clause 38 providing that a State member of the Legislature should not vote on any matter which the House of Commons

ment was designed to avoid the extraordinary anomaly by which representatives of States were allowed to vote on matters affecting the Provinces, but representatives of Provinces did not have corresponding powers in relation to the States. [25 GEO. 5.]

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PART II.
—cont.

(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.

English to be used in the Federal Legislature.

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.

Restrictions on discussion

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 performance of his judicial functions.

* (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.

Courts not to inquire into proceedings of the Legislature.

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.

* D. Kirkwood (Lab-Dunbarton Burghs) moved the omission of subsection 2 of clause 40. He said that he wished to ensure that social reform measures were not blocked in the future.

Major C. R. Attlee condemned the Subsection 2 of clause 40 as a deliberate incitement to violence. He said that [25 Geo. 5.] Government of India. and 27 prevent social reform.

CHAPTER IV.

A.D. 1935.

PART II.
—cont.

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 5 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: Power of Governor-General to promulgate ordinances during recess of Legislature.

Provided that the Governor-General—

10 (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

15 (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.

20 (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—

25 (a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly 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;

30 (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

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

(3) If and so far as an ordinance under this section 40 makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

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PART II.
—cont.Power of
Governor-
General to
promulgate
ordinances
with respect
to certain
subjects.

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. 5

(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. 10

(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— 15

(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; 20

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

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament. 25

(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. 30

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

Power of
Governor-
General in
certain cir-
cumstances
to enact
Acts.

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, 35

he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and shall attach to any such message a draft of the Bill which he considers necessary.

A.D. 1935.
PART II.
—cont.

(2) At any time after the expiration of one month the Governor-General may enact, as a Governor-General's Act, the Bill proposed by him to the Chambers 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.

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 the Federation cannot be carried on in accordance with the provisions of this Act, he may, by Proclamation—

Power of Governor-General to issue Proclamations.

(a) declare that his functions 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,

A.D. 1935.

PART II.
—cont.

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: 5

Provided that nothing in this subsection 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. 10

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

(3) A Proclamation issued under this section— 15

(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 unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament. 20

(4) The functions of the Governor-General under this section shall be exercised by him in his discretion. 25

PART III.

THE GOVERNORS' PROVINCES.

CHAPTER I.

THE PROVINCES.

30

Governors'
Provinces.

46.—(1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act. 35

(2) Burma shall cease to be part of India.

** Col. Wedderburn moved the omission of clause 47. Sir Samuel Hoare pointed out that Berar was Hyderabad territory, the inhabitants had never been British subjects, but for many years under treaty with the Nizam, Berar had*

(3) In this Act the expression "Province" means, A.D. 1935. unless the context otherwise requires, a Governor's Province, and "Provincial" shall be construed accordingly. PART III. —cont.

5 * 47. Whereas certain territory (in this Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is, at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, 10 administered together with the Central Provinces:

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness 15 over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar:

Now, therefore,—

20 (1) While any such agreement is in force—

(a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province 25 by the name of the Central Provinces and Berar;

(b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness; 30

(c) the provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar shall be such as to give effect to any provisions with respect to those matters contained in the agreement. 35 40

(2) If no such agreement is concluded, or if such an agreement is concluded but subsequently

been administered with the Central Provinces of Nizam and the Crown had been discussing the same and there was general agreement to continue the present

A.D. 1935.

PART III.
—cont.

ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper. 5

CHAPTER II.

THE PROVINCIAL EXECUTIVE.

The Governor.

10

Appoint-
ment
of Governor.

48.—(1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office. 15

Functions
of Governor

49.—(1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority. 20 25

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws. 30

*Administration of Provincial Affairs.*Council of
ministers.

* 50.—(1) There shall be a council of ministers to aid and advise the Governor 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 : 35

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

* Mr. George Hall moved an amendment to clause 50 providing for the appointment of a Prime Minister which was negatived. 40

* See House of Comm. Debates, 11th Dec. 1934. p. 230.
The Speech of Mr. Morgan Jones.
[25 GEO. 5.] Government of India.

33

* (2) The Governor in his discretion may preside at meetings of the council of ministers. A.D. 1935.

PART III.
—cont.

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

51.—(1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure. Other provisions as to ministers.

15 (2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

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

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

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

(5) The functions of the Governor under this section 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.

* 52.—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:— Special responsibilities of Governor.

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

40 (b) the safeguarding of the legitimate interests of minorities;

Mr. J. S. Cooper moved the rejection of the clause. He contended that its provisions were too wide.

A.D. 1935.

PART III.

—cont.

- (c) the securing to members of the public services of any rights provided for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of 5 the purposes which the provisions of chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this 10 Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State; and
- (g) the securing of the execution of orders or 15 directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing 20 that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of Bengal and the Governor of Assam shall also have the special responsibility of securing that the due discharge of their functions in respect of excluded areas is not pre- 25 judiced or impeded by any course of action taken with respect to any other matter, the Governor of the North-West Frontier Province shall also have the special responsibility of securing that the due discharge of his functions in respect of tribal areas for which he is agent 30 to the Governor-General is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Sukkur Barrage Scheme. 35

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

53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, 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 Instructions may be issued.

A.D. 1935.
PART III.
—cont.
Provisions
as to In-
strument of
Instructions.

10 ★(2) The validity of anything done by the Governor of a Province 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.

54. In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall, subject to the provisions of any Instrument of Instructions issued to him by His Majesty, 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 Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

Superin-
tendence of
Governor-
General.

25 55.—(1) The Governor of each Province shall appoint a person to be Advocate-General for the Province.

Advocate-
General.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him.

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

35 (4) 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 shall exercise his individual judgment.

56. Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend, or approve the making or amendment

Provisions
as to police
rules.

A.D. 1935.

PART III.

—cont.

of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force. 5

Provisions
as to
crimes of
violence
intended to
overthrow
Govern-
ment.

57.—(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall to such extent as may be specified in the direction be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly. 10 15

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member, but shall not be entitled to vote. 20 25

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

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof. 30

Disclosure
of sources of
information.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given by any officer of any police force in the Province to any member of that force except by direction of the Inspector-General of Police, or to any other person except by direction of the Governor in his discretion. 35 40

*Mr. J. A. Parkinson
has been recommended
for appointment as
Sub-secy. of
the Govt.
of the Punjab
and is now to be
named a member
of the Legislature*

*any person in
the Service of
the Crown
or any person
connected with
the Government*

*Spencer Somerville (22.3.35)
agreed to.*

Mr. J. W. Bangfield moved omission of the words "and Secretaries to Govt." from sub-section 4, clause 59

[25 GEO. 5.] Government of India.

Gov. C. R. Attle supporting, was of opinion that the

59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

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PART III.

—cont.

Conduct of business of Provincial Government.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that the making thereof was not duly authorized.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial 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 is by or under this Act required to act in his discretion.

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

(5) In the discharge of his functions under this section the Governor shall act in his discretion after consultation with his ministers.

CHAPTER III.

THE PROVINCIAL LEGISLATURE.

General.

60.—(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

Constitution of the Legislature.

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, and Bihar, two Chambers;

(b) in other Provinces, one Chamber.

inclusion of Secretaries implied a lack of confidence in Ministers. Mr. R. A. Butler (Under-Secretary of State for India) emphasized that there was no intention of

going behind members' backs. He said that the proposal
had turned the present practice and would be understood
in India³⁸ The amendment was negative. [25 GEO. 5.]
(22-3-35)

A.D. 1935.

PART III.
—cont.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly. 5

Composition
of Chambers
of Provincial
Legislatures.

61.—(1) The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly of every Province, 10
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.

(3) Every Legislative Council shall be a permanent 15
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 provision in that behalf made in relation to the Province under the said Fifth Schedule. 20

Sessions
of the
Legislature,
prorogation
and dissolution.

* 62.—(1) The Chamber or Chambers of each Provincial 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. 25

(2) Subject to the provisions of this section the Governor 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 Chamber or Chambers; 30

(c) dissolve the Legislative Assembly.

(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act. 35

Right of
Governor
to address
Chambers.

63.—(1) The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance 40
of members.

* Labour amendment to clause 62 providing that the interval between sessions should not exceed six months was opposed by Mr. R. A. Butler who pointed out that an

(2) The Governor may in his discretion send messages ^{A.D. 1935.} to the Chamber or Chambers of the Provincial Legislature, and a Chamber to whom any message is so sent ^{PART III.} shall with all convenient dispatch consider any matter ^{—cont.} which they are required by the message to take into consideration.

64. Every minister shall have the right to speak in, ^{Rights of} and otherwise take part in the proceedings of, the ^{ministers,} Legislative Assembly of the Province or, in the case of a ^{as respects} Province having a Legislative Council, both Chambers ^{Chambers.} and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, 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.

65.—(1) Every Provincial Legislative Assembly shall, ^{Election of} as soon as may be, choose two members of the Assembly ^{officers of} to be respectively Speaker and Deputy Speaker thereof, ^{Chambers.} and so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly: 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:

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly, the Deputy Speaker or, if he is also absent, such person as may be

A.D. 1935.

PART III.
—cont.

determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature, and until provision in that behalf is so made such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section 10 . (other than the proviso to subsection (2) thereof) shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "President" and "Deputy President" for the titles "Speaker" and "Deputy Speaker" respectively, and with the substitution of references to the Council for references to the Assembly. 15

Voting
in Cham-
bers,
power of
Chambers
to act
notwith-
standing
vacancies
and quorum.

66.—(1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined 20 by a majority of votes of the members present and voting other than the Speaker or President, or person acting as such.

The Speaker or President, or person acting as such, shall not vote in the first instance, but shall have and exercise 25 a casting vote in the case of an equality of votes.

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it 30 is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth the total number 35 of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than twelve members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting 40 until at least one-sixth of the members, or, as the case may be, at least twelve members, are present.

An amendment moved by Sir Samuel Hoare providing for a Council's quorum to be 10, was agreed to. (22.3.35)

Provisions as to Members of Legislatures.

A.D. 1935.

PART III.
—cont.
Oath or
affirmation
of members.

67. Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, 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.

68.—(1) No person shall be a member of both Chambers of a Provincial Legislature and rules made by the Governor 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.

Vacation of
seats.

(2) If a member of a Chamber—

(a) ceases to possess any of the qualifications which he was under the provisions of the Fifth Schedule to this Act required to possess when he was chosen a member; or

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

(c) by writing under his hand addressed to the Governor resigns his seat;

his seat shall thereupon become vacant.

(3) If for sixty days a member of a 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.

69.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council—

Disqualifica-
tions for
member-
ship.

(a) if he holds any office of profit under the Crown in India other than an office declared by Act of the Provincial 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;

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PART III.

—cont.

- (d) if, whether before or after the commencement of this Part of this Act, 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 relating to elections 5 which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence conviction whereof is a disqualification for membership of the Legislature, unless such period has elapsed as may be specified in 10 that behalf in the provisions of that Order or Act;
- (e) if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a court in British India 15 or in a State which is a Federated State and sentenced to transportation or to imprisonment for a period exceeding twelve months, unless a period of five years, or such less period as the Governor, acting in his discretion, may 20 allow in any particular case, has elapsed since his release.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of 25 imprisonment for a criminal offence.

(3) 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 (1) of this section is at the date of the disqualification a 30 member of a Chamber, his seat shall, notwithstanding anything in this of 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 35 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.

(4) For the purposes of this section a person shall 40 not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

70. If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council 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 Province.

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PART III.
—cont.
Penalty for sitting and voting when not qualified or disqualified.

71.—(1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial 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 a Chamber of such a Legislature of any report, paper, votes or proceedings.

Privileges, &c. of members.

(2) In other respects, the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature and until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province.

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

For the purposes of this subsection an enactment providing for the punishment of persons who refuse to attend as aforesaid shall be deemed to be an enactment conferring power to compel attendance of persons.

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PART III.
—cont.

(4) 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.

5

Salaries and
allowances
of members.

72. Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature, and until provision in that respect is so made, 10 allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.

Legislative Procedure.

15

Introduction
of Bills, &c.

73.—(1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province 20 shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly. 25

(4) A Bill which is pending in the Legislative Assembly of a Province or which having been passed by the Legislative Assembly is pending in the Legislative Council shall lapse on a dissolution of the Assembly.

Passing of
Bills in
Provinces
having
Legislative
Councils.

74.—(1) Subject to the provisions of this section, a 30 Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers. 35

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not before the expiration of twelve months from its reception by the Council presented to the Governor for his assent, the Governor may summon the Chambers 40 to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

A.D. 1935.
PART III.
cont.

The functions of the Governor under the proviso to this subsection shall be exercised by him in his discretion.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section 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 purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, 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 by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and 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.

75. A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall 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 consideration of the Governor-General:

Assent to
Bills.

Provided that the Governor may in his discretion return the Bill together with a message requesting

A.D. 1935.

PART III.
—cont.

that the Chamber or Chambers 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, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly. 5

Bills
reserved
for con-
sideration.

76.—(1) When a Bill is reserved by a Governor for the consideration of the Governor-General, 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 thereon: 10

Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, the Chambers of the Provincial Legislature, together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them, with or without amendment, it shall be presented again to the Governor-General for his consideration. 20

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto. 25

Power of
Crown to
disallow
Acts.

77. Any Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent, and where any Act is so disallowed the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void. 30 35.

Procedure in Financial matters.

Annual
financial
statement.

78.—(1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, 40

in this Part of this Act referred to as the "annual financial statement".

PART III.
—cont.

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

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

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

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of 15 any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of each Province—

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

25 (b) debt charges for which the Province 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 the advocate-general and of the personal and secretarial staffs of the Governor;

30 (d) expenditure in respect of the salaries and allowances of judges of any High Court;

• (e) expenditure connected with the administration of any areas which are for the time being excluded areas;

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

• (g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

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PART III.

—cont.

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

Procedure
in Legis-
lature with
respect to
estimates.

79.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in sub-paragraph (a) of sub-section (3) of the last preceding section. 5 10

See Section
34(2) of
Bill.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein. 15

(3) No demand for a grant shall be made except on the recommendation of the Governor. 20

Authenti-
cation of
schedule of
authorised
expendi-
ture.

80.—(1) The Governor shall authenticate by his signature a schedule specifying—

(a) the grants made by the Assembly under the last preceding section; 25

(b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers: 30

Provided that if the Assembly have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor 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. 35 40

(2) The schedule so authenticated shall be laid ^{A.D. 1935.} before the Assembly but shall not be open to discussion ^{PART III.} or vote in the Legislature. ^{—cont.}

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

81. If in respect of any financial year further expenditure from the revenues of the Province becomes ^{Supplementary statement of expenditure.} necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers 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.

82.—(1) A Bill or amendment making provision—
 (a) for imposing or increasing any tax or impost whether local or general; or
 (b) for authorising the borrowing of money or the giving of any guarantee by the Province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or
 (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure,

Special provisions as to financial Bills.

See Section 34 of this Bill.

shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

(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 and payment of fees for licences or fees for services rendered.

A.D. 1935.

Part III
—cont.

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

5

Provisions
with respect
to certain
educational
grants in
aid.

83.—(1) If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European communities or either of them was included in the grants made in any Province in aid of education, then in each subsequent financial year, not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three-fourths of the members of the Assembly, a grant for the like purposes shall be made and the proportion which that grant bears to the total of the grants made in the Province in aid of education shall not be varied to the disadvantage of the communities or community concerned.

10.

15

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.

20

(3) Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities.

25

Procedure generally.

Rules of
procedure.

84.—(1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :

30

Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules—

35

(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

40

required to act in his discretion or to exercise his individual judgment;

A.D. 1935.
PART III.
—cont.

- (b) for securing the timely completion of financial business;
- 5 (c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject who is ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;
- 10
- (d) for prohibiting, save with the consent of the Governor in his discretion—
- 15
- (i) the discussion of or the asking of questions on any matter affecting relations between His Majesty or the Governor-General and any foreign State or Prince; or
- 20
- (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters arising out of or affecting the administration of an excluded or partially excluded area;

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

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, 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 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 commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the

A. D. 1935. Province. subject to such modifications and adaptations
 PAR. III. as may be made therein by the Governor acting in his
 —contd. discretion.

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person 5 as may be determined by rules of procedure made under this section, shall preside.

English to be used in Provincial Legislatures.

85. All proceedings in the Legislature of a Province shall be conducted in the English language:

Provided that the rules of procedure of the Chamber 10 or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

Restrictions on discussion.

86.—(1) No discussion shall take place in a Pro- 15 vincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the performance of his judicial functions.

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be 20 introduced in the Provincial 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 the 25 Province, 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.

Courts not to inquire into proceedings of the Legislature.

87.—(1) The validity of any proceedings in a 30 Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, 35 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.

CHAPTER IV.

A.D. 1935.

PART III.

—cont.

LEGISLATIVE POWERS OF GOVERNOR.

88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that 5 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:

Power of Governor to promulgate ordinances during recess of Legislature.

Provided that the Governor—

- 10 (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 or the Governor-General's previous sanction to the 15 introduction thereof into the Legislature; and
- 20 (b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature or if he would have deemed it necessary to reserve a Bill containing the 25 same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, 30 but every such ordinance—

- (a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;
- 35 (b) shall be subject to the provisions of this Act relating to the powers of the Governor-General and of His Majesty to disallow Acts as if it
- 40

The House approved of the amendment of clause 88 d.b. reference to the power of the Governor-General to disallow Acts. Mr. R. A. Butler pointing out that a mistake was made since the power of disallowance was assigned to His Majesty.

A.D. 1935.

PART III.

—cont.

were an Act of the Provincial Legislature assented to by the Governor; and

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

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted 5 in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

Power of Governor to promulgate ordinances with respect to certain subjects.

89.—(1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the 10 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 15 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 20 not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance— 25

A Simj. Law Amendment Bill was also adopted like the amendment of clause 88
(a) shall be subject to the provisions of this Act relating to the powers of the Governor-General and of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;

(b) may be withdrawn at any time by the Governor; 30 and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him 35 before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall, until disallowed by the Governor-General, be deemed to be an Act of the Provincial Legislature which has been reserved for his consideration and assented to by him.

A.D. 1935.
PART III.
—cont.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

* 90.—(1) If at any time it appears to the Governor 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 the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and shall attach to any such message a draft of the Bill which he considers necessary.

Power of
Governor
to enact
Acts.

(2) At any time after the expiration of one month the Governor may enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers 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 the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature shall be void :

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal

*Clause 90 was criticized by Mr. F.S. Gopal and Mr. Borgee
fines in the ground that Governor's Acts should not
be permanent. See 2021*

A.D. 1935.

PART III.
—cont.

Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

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

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

CHAPTER V.

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

Excluded
areas and
partially
excluded
areas.

91. In this Act the expressions "excluded area" and "partially excluded area" mean respectively the areas specified in Part I and Part II of the Sixth Schedule to this Act:

Provided that His Majesty may by Order in Council—

- (a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area;
- (b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area;
- (c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area;
- (d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area;

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper.

Administra-
tion of
excluded
areas and

92.—(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature,

shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

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PART III.

—cont.

partially
excluded
areas.

(2) The Governor may make Regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any Regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such Regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

CHAPTER VI.

PROVISIONS IN CASE OF FAILURE OF
CONSTITUTIONAL MACHINERY.

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

Power of
Governor
to issue
Proclama-
tions.

(a) declare that his functions 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 Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be

A.D. 1935.

PART III.
—cont.

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 Provincial body or authority :

Provided that nothing in this subsection shall 5
authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied 10
by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secre-
tary of State and shall be laid by him before
each House of Parliament; 15

(b) unless it is a Proclamation revoking a previous
Proclamation, 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. 20

(4) The functions of the Governor under this section
shall be exercised by him in his discretion and no
Proclamation shall be made by a Governor under this
section without the concurrence of the Governor-General
in his discretion. 25

PART IV.

THE CHIEF COMMISSIONERS' PROVINCES.

Chief Com-
missioners'
Provinces.

* 94.—(1) The following shall be the Chief Com-
missioners' Provinces, that is to say, the heretofore
existing Chief Commissioners' Provinces of British Balu- 30
chistan, Delhi, Ajmer-Merwara, Coorg and the Andaman
and Nicobar Islands, the area known as Panth Piploda,
and such other Chief Commissioners' Provinces as may be
created under this Act.

(2) Aden shall cease to be part of India. 35

(3) A Chief Commissioner's Province shall be
administered by the Governor-General acting, to such
extent as he thinks fit, through a Chief Commissioner
to be appointed by him in his discretion

*See clause
272 of this
Bill.*
*Mr. L. S. Cochrane moved an amendment to clause 94 with
the object of suggesting a method by which a Chief
Commissioner's Province could be raised to the*

Status of a Governor's Province. Sir Samuel Hoare explained that this matter was covered by clause 272. The amendment was withdrawn and the clause was agreed to. (22.3.35)

[25 GEO. 5.] Government of India

95.—(1) In directing and controlling through the Chief Commissioner the administration of British Baluchistan the Governor-General shall act in his discretion.

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PART IV.
—cont.

British
Baluchistan.

- 5 (2) The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but, notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor
10 General in his discretion by public notification so directs, and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifica-
15 tions as he thinks fit.

- (3) The Governor-General may in his discretion make Regulations for the peace and good government of British Baluchistan, and any Regulations so made may repeal or amend any Act of the Federal
20 Legislature which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.

- 25 The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such Regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.

- 30 96. The provisions of subsection (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

The Andaman and
Nicobar
Islands.

- 35 97. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg, and expenses in respect of Coorg, shall continue unchanged.

Coorg.

- 40 98. The provisions of Part III of this Act with respect to police rules and with respect to crimes of violence intended to overthrow the government, including the provisions thereof relating to the non-disclosure of

Provisions
as to police
rules and
power of

A.D. 1935.

PART IV.

—cont.

Governor-General to deal with crimes of violence.

certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governors' Provinces, with the substitution, for references to the Governor and the Chamber or Chambers of the Provincial Legislature, of references to the Governor-General and the Chambers of the Federal Legislature.

PART V.

LEGISLATIVE POWERS.

CHAPTER I.

10 .

DISTRIBUTION OF POWERS.

Extent of Federal and Provincial laws.

99. Subject to the provisions of this Act—

(1) 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; 15

(2) Without prejudice to the provisions of the preceding paragraph, a Federal law shall, unless it is otherwise expressly provided therein, extend— 20

(a) to all subjects of His Majesty within any part of India;

(b) to all Indian subjects of His Majesty wherever they may be; 25

(c) 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 and for the subjects thereof, to all subjects of that State wherever they may be; and 30

(d) in the case of a law for the regulation or discipline of any naval, military or air force raised in British India, to all members of, and all persons attached to, employed with or following that force, wherever they may be, in so far as they are not subject to the Army Act or the Air Force Act or, otherwise than by virtue of an Act of the Indian or of the Federal Legislature, to the Naval Discipline Act. 35 40

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").

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PART V.
—cont.Subject
matter of
Federal and
Provincial
laws.

(2) Notwithstanding anything 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) Subject 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.

101. Nothing in this Act shall be construed as empowering the Federal Legislature, in virtue of the accession of a State to the Federation, to make laws extending to the State or the subjects thereof otherwise than in accordance with the Instrument of Accession of that State and any conditions contained therein.

Extent of
power to
legislate
for States.

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:

Power of
Federal
Legislature
to legislate
on Proclam-
ation of
Emergency.

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

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PART V.
—cont.

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 5 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 10 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 15 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 20 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 25 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.

Power of Federal Legislature to legislate for two or more Provinces by consent.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters 30 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 35 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.

Residual powers of legislation.

104.—(1) The Governor-General may by public 40 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 or to impose a tax or duty 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.

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PART V.
—cont.

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

105.—(1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an Act of the Indian Legislature passed before the commencement of Part III of this Act, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however—

Application
of Naval
Discipline
Act to
Indian
naval
forces.

- 20 (a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by
- 25 the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of
- 30 authorising or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf; and
- 35 (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the
- 40 purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian Navy.

(2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and

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PART V.
cont.

ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

Power of
Federal
Legislature
to give
effect to
inter-
national
agreements.

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 agreement in question ceasing to have effect, be repealed as respects any Province by the Legislature thereof.

Incon-
sistency
between
Federal
laws and
Provincial,
or State,
laws.

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, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial 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, 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 over the Federal law, 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 inconsistent with 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.

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PART V.
—cont.

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—
- Sanction of Governor-General or Governor required for certain legislative proposals.
- * (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or
 - 15 (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
 - 20 (c) affects matters reserved to the discretion of the Governor-General in relation to defence, external affairs, ecclesiastical affairs, the tribal areas or British Baluchistan; or
 - (d) repeals, amends or affects any Act relating to any police force; or
 - 25 (e) affects the procedure for criminal proceedings in which European British subjects are concerned.

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

* Sir Thomas Inskip stated that the Govt. were prepared to insert a provision making it clear that the proposal

A.D. 1935.

PART V.
—cont.

- (c) affects matters reserved to the discretion of the Governor-General in relation to defence, external affairs, ecclesiastical affairs, the tribal areas or British Baluchistan; or
- (d) affects the procedure for criminal proceedings in which European British subjects are concerned; 5

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— 10

- (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. 15

(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. 20

Require-
ments as to
sanctions
and recom-
mendations
to be
regarded as
matters of
procedure
only.

109.—(1) Where under 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. 25

(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— 30

- (a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty; 35
- (b) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty. 40

(*) It is stated that the Committee of the Indian Councils will now press for an amendment of clause 110 so as to include the words "internal sovereignty of the Princes" [25 GEO. 5.] Government of India their rights and privileges. 67

(*) 110. Nothing in this Act shall be taken— A.D. 1935.

(a) to affect the power of Parliament to legislate for British India, or any part thereof; or PART V. —cont.

5 (b) to empower the Federal Legislature, or any Provincial Legislature— Savings.

(i) to make any law affecting the Sovereign or the Royal Family, 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

10 (ii) except in so far as is expressly permitted by 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. 283 of Bill.

20 * Mr. Gordon Macdonald (Lab) moved an amendment to change the title of the Bill to "The Indian Bill" and the right to amend the Bill. Mr. K. A. Butler replied that as a result of the discussion at the Select Committee certain powers of making provisions with respect to discrimination, etc. (27.3.35)

25 111.—(1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as— Provisions as to British subjects domiciled in the United Kingdom.

(a) imposes any restriction on the right of entry into British India; or

30 (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any liability, restriction or condition in regard to travel, residence, the holding of property or public office, or the carrying on of any occupation, trade, business or profession: 35

Provided that no person shall by virtue of this subsection be entitled to claim exemption from any such restriction, condition or liability as aforesaid if and so long as Indian subjects of His Majesty domiciled in British India are by or under the law of the United

40 representatives had been given to the Indian Legislature (P. S. Report para 381-382). Apart from that it was the Govt's intention that there should be an opportunity

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PART V.
—cont.

Kingdom subject in the United Kingdom to a similar restriction, condition or liability imposed in regard to the same subject matter by reference to the same principle of distinction.

(2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this subsection shall be exercised by him in his discretion.

Provisions
as to taxation.

112. No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom, or against Burman subjects of His Majesty domiciled in Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

Companies
incor-
porated in
the United
Kingdom.

113. Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the shareholders, officers, agents and servants thereof, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies trading in British India requirements or conditions relating to or connected with—

(a) the place of incorporation of a company; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of its shareholders, officers, agents or servants: A.D. 1935.
PART V.
—cont.

5 Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under
10 the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and trading in the United Kingdom.

114.—(1) Subject to the following provisions of this chapter, a British subject domiciled in the United Companies
incor-
porated in
India.
15 Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or
20 connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company or of its shareholders, officers, agents or servants:

25 Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies
30 incorporated by or under the laws of the United Kingdom on Indian subjects of His Majesty domiciled in British India.

(2) For the purposes of this section, but not for the purposes of any other provision of this chapter, a com-
35 pany registered in Burma before the commencement of Part III of this Act shall be deemed to be a company incorporated by or under the laws of British India.

115.—(1) No ship registered in the United Kingdom shall be subjected directly or indirectly by or under any
40 Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India except in so far as ships Reciprocal
treatment
of ships.

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PART V.
—cont.Subsidies
for the
encourage-
ment of
trade or
industry.

registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter. 5

116.—(1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of public moneys in India for the encouragement of any trade or industry, to the same extent as companies incorporated by or under the laws of British India are eligible therefor: 10 15

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy payable out of public moneys for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry. 20 25

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless— 30 35

(a) the company is incorporated by or under the laws of British India; and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are Indian subjects of His Majesty; and 40

- (c) the company gives such reasonable facilities for the training of Indian subjects of His Majesty as may be so prescribed.

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PART V.

—cont.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

- 117.—(1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to Indian subjects of His Majesty domiciled in British India and to companies incorporated by or under the laws of British India and in British India to subjects of His Majesty domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.
- (2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

Power to secure by convention reciprocal treatment of persons in the United Kingdom and British India.

118. No Federal or Provincial law which prescribes, or empowers any authority to prescribe, the qualifications to be held by persons—

Professional qualifications in general.

- (a) practising any profession in British India; or
(b) holding any office or performing any functions in British India,

shall have effect so as to preclude any person who immediately before the passing of this Act was lawfully practising any profession in British India from continuing to practise that profession, or from being appointed to

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PART V.

—cont.

or holding any office or performing any functions, if at the said date he was qualified to be appointed to or to hold or perform that office or those functions, or offices or functions of a comparable or analogous nature.

Medical
qualifica-
tions.

119.—(1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any law of the Indian Legislature, or of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of the Federation or of the Province, as the case may be makes provision for securing—

- (a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma; and
- (b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in India and in the United

Kingdom as they think fit an opportunity of tender-
ing evidence or submitting representations in writing,
shall determine whether the diploma in question
does or does not furnish a sufficient guarantee of the

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PART V.
—cont.

- 5 possession of the requisite knowledge and skill for the
practice of medicine, surgery and midwifery, and shall
notify their determination to the Governor-General, who
shall communicate it to such authorities, and cause it
to be published in such manner, as he thinks fit
- 10 (3) The condition referred to in subsection (1) of
this section is that Indian subjects of His Majesty
holding a medical diploma granted after examination in
India shall not be excluded from practising medicine,
surgery or midwifery in the United Kingdom or from
15 being registered therein as qualified medical practitioners,
except on the ground that that diploma does not furnish a
sufficient guarantee of the possession of the requisite know-
ledge and skill for the practice of medicine, surgery and
midwifery, and shall only be excluded on that ground
20 so long as the law of the United Kingdom makes provi-
sion for enabling any question as to the sufficiency of that
diploma to be referred to and decided by the Privy
Council. *

- (4) A medical practitioner entitled to practise or
25 to be registered in India by virtue of a diploma granted in
the United Kingdom, or in the United Kingdom by
virtue of a diploma granted in India, shall not in the
practice of his profession be subjected to any restriction or
condition to which persons entitled to practise by virtue of
30 diplomas granted in the other country are not subject.

- (5) The foregoing provisions of this section shall,
subject to the modifications hereinafter mentioned, apply
in relation to Burman subjects of His Majesty who, by
virtue of medical diplomas granted to them in Burma or
35 the United Kingdom, are, or are entitled to be, registered
in the United Kingdom as qualified medical practitioners
as they apply in relation to British subjects domiciled in
the United Kingdom who, by virtue of medical diplomas
granted in the United Kingdom, are, or are entitled to be,
40 registered in the United Kingdom as qualified medical
practioners.

The said modifications are as follows, that is to say,—

- (a) subsection (3) shall not apply and the reference
in subsection (1) to the condition set out there-
in shall be deemed to be omitted;

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PART V.
—cont.

(b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

Officers of
Indian
Medical
Service, &c.

120. A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

Savings and
interpreta-
tion.

121.—(1) Nothing in the preceding sections of this chapter shall affect the operation of any law passed or made before this Act other than a law relating to medical practitioners.

(2) In this chapter "law" includes any ordinance, order, byelaw, rule or regulation, having, by virtue of any Act of Parliament or of any existing Indian law, or of any law of the Federal or any Provincial Legislature, the force of law.

PART VI.

ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES

General.

General
duty to
secure
respect for
Federal
laws.

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

(2) The reference in sub-section (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

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PART VI.

—cont.

5 **123.**—(1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Governor 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.

Power of
Federal
Legislature
to confer
powers, &c.
on Provin-
ces and
States in
certain
cases.

(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.

20 (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 the cost of any additional staff thereby rendered necessary in the Province or State.

30 **124.** 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 entrusting to the Ruler or to his officers functions in relation to the administration in his State of any law of the Federal Legislature which applies therein, but any such agreement shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of that law is properly carried out.

Adminis-
tration of
Federal
Acts in
Indian
States.

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PART VI.
—cont.
Control of
Federation
over Pro-
vince in
certain
cases.

125.—(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 be necessary for that purpose. 5

(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 : 10

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. 15

(3) 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. 20

(4) Without prejudice to his powers under the last preceding sub-section, 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. 25 30

Acquisition
of land for
Federal
purposes.

126. The Federation may, if it deems it necessary to acquire for the purposes of the Federation (including purposes of the Federal Railway Authority) any land situate in a Province, require the Province to acquire the land on behalf of the Federation or to transfer it to the Federation as the case may be, on the same terms and subject to the same conditions as would be or would have been applicable, if the Province were acquiring or had acquired the land for purposes of the Province. 35 40

Duty of
Ruler of a
state as

127.—(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. A.D. 1935.

PART VI.

—cont.

respects
Federal
subjects.

- (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 or has failed to maintain a system of administration adequate for the purposes of any Act of the Federal Legislature, the administration of which has been entrusted to him or to his officers, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.

Broadcasting.

- 128.—(1) The Government of every Province and the the Ruler of every Federated State shall have reasonable facilities for broadcasting from transmitters in that Province or State subject to such conditions as may be imposed by the Federal Government, but it shall not be lawful to impose any conditions regulating the matter so broadcast:

- 20 Provided that nothing in this sub-section shall prevent the imposition of conditions on the Government of a Province regulating the broadcasting of any matter which does not concern a subject to which the executive authority of the Province extends.

- 25 (2) The Federal Government shall not unreasonably refuse to delegate powers with respect to broadcasting to the Governments of Provinces and the Rulers of Federated States to such extent as may be necessary to enable those Governments and Rulers to regulate broadcasting from short range transmitters in their respective Provinces and States.

- 35 (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.

- 40 (4) If any question arises under this section whether reasonable facilities have been afforded to any Government or Ruler, or whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to delegate powers is unreasonable, or whether any transmitter

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PART VI.
—cont.

is a short range transmitter, 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 purpose of discharging 5 his special responsibility 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 10 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.

Interference with Water Supplies.

15

Complaints
as to in-
terference
with water
supplies.

129. 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, have been, or are likely 20 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 25 from any natural source of supply in any Governor's or Chief Commissioner's Province, or in any Federated State, that Government or Ruler may complain to the Governor-General.

Decision of
complaints.

130.—(1) If the Governor-General receives such a 30 complaint as aforesaid, he shall, unless he is of opinion that no action should be taken by him in the matter, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and 35 requests 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. 40

(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, and in any Province or State affected effect shall be given to any order so made by him, 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:

Provided that 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 whether by himself or by a predecessor of his.

(6) An order made by 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.

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

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PART VI.

—cont.
Interference
with water
supplies
of Chief
Commissioner's
Province.

131. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, have been or are likely to be affected detrimentally 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 any natural source of supply in any Governor's Province or in any Federated State, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.

Jurisdiction
of Courts
excluded.

132. 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 the foregoing provisions of this Part of this Act by the Government of a Province, the Ruler of a State, or the Governor-General.

Inter-Provincial Co-operation.

Provisions
with respect to an
Inter-Provincial
Council.

133. If at any time it appears to His Majesty upon consideration of addresses presented to him through the Governor-General from any Legislatures in India 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 A.D. 1935.
 and, in particular, recommendations for the PART VI.
 better co-ordination of policy and action with —cont.
 respect to that subject.

5 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.

PART VII.

FINANCE, PROPERTY, CONTRACTS AND SUITS.

CHAPTER 1.

FINANCE.

15 *Distribution of Revenues between Federation and Federal Units.*

134. 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.

Meaning of "revenues of Federation" and "revenues of Province".

135. 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, water 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:

Certain succession duties, stamp duties, terminal taxes on and taxes fares and freights.

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PART VII.

cont.

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.

5

Taxes on income.

136.—(1) Taxes on income other than income from agricultural land shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax other than a corporation tax, except in so far as those 10 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 15 is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :

Provided that the Federal Legislature may at any time increase the said taxes by a surcharge for Federal 20 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— 25

- (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 30 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 the Governor-General in his discretion may in any year of the second prescribed period direct 35 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 represen- 40 tatives of Federal and Provincial 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.

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—cont.

(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, other than a corporation tax, are not leviable by the Federation 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 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—

15 “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
 20 Authority in respect of which income tax is chargeable.

137.—(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 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.

Salt duties, excise duties and export duties.

(2) Notwithstanding anything in the preceding subsection, 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.

138.—(1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested,

Prior sanction of

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PART VII.

—cont.

Governor-General
required to
Bills
affecting
taxation
in which
Provinces
are
interested.

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. 5

(2) In this section the expression "tax or duty in which Provinces are interested" means— 10

(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. 15

Grants from
Federation
to certain
Provinces.

139. Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces : 20

Provided that, except in the case of the North-West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty, praying that the increase may be made. 25 30

Power of
Federation
and Pro-
vinces to
make
grants.

140. It shall be lawful for the Federation to make grants for any Provincial purpose or object, or for any purpose or object of a Federated State, and for a Province to make grants for any Federal purpose or object.

Savings.

141.—(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. 35

(2) Any taxes, duties, cesses or fees which, on the first day of January, nineteen hundred and thirty-five, 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 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.

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PART VII.

—cont.

142.—(1) In the foregoing provisions of this chapter “net proceeds” 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.

Definition
of “net
proceeds.”

(2) Subject as aforesaid, 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.

30

The Crown and the States.

143. There shall be paid to His Majesty by the Federation in each year the sums required to defray the expenses of His Majesty incurred in discharging the functions of the Crown in its relations with Indian States, including any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

Expenses
of the
Crown.

144. All cash contributions 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

Money pay-
ments from
or by Indian
States to be
receivable

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PART VII.

—cont.

by 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.

Cash contri-
butions
and ceded
territories.

145.—(1) Subject to the provisions of sub-section (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 the 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 in return for specific military guarantees, there shall be paid to that State, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, 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 sub-section (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.

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—cont.

(5) In this chapter “cash contributions” means—

10 (a) 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
15 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
20 forces or police, or in respect of the expenses of an agent;

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

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

30 (6) In this chapter “privilege or immunity” means any such privilege or immunity of a financial character enjoyed by or under any treaty or agreement, or by usage, as is hereinafter mentioned, that is to say—

35 (a) the retention of the right to levy sea customs, or to produce and sell 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
40 free salt;

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

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PART VII.
—cont.

- (d) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and
- (e) the right to issue currency notes.
- (7) The Instrument of Accession of a State may contain— 5
- (a) a statement of the privileges and immunities enjoyed by the State;
- (b) a statement of the annual value of any such privileges or immunities; 10
- (c) in the case of a privilege or immunity the value of which is fluctuating or uncertain, provision for determining from time to time the value to be attributed thereto.
- (8) Subject to the provisions of the last preceding subsection, if any question arises whether a contribution, privilege, immunity or cession is a contribution, privilege, immunity or cession within the meaning of this chapter the decision of His Majesty shall be final. 15

Certain payments to Federated States, &c., to be charged on Federal revenues.

146. 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. 20 25

Value of privileges and immunities to be set off against share of taxes, &c., assigned to Federated States.

147. Where under the foregoing provisions of this chapter there is made 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 of any privilege or immunity enjoyed by that State which has not been otherwise taken into account shall be set off against the payment or distribution. 30

Miscellaneous financial provisions.

Expenditure defrayable out of Indian revenues.

148. No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of the government of India. 35

149.—(1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

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PART VII.
—cont.

- 5 (a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office;
- 10 (b) the appointment of an officiating Governor or Deputy Governor of the Bank;
- (c) the supersession of the Central Board of the Bank and any action consequent thereon; and
- (d) the liquidation of the Bank.
- 15 (2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him the Governor-General shall exercise his individual judgment.

Exercise by Governor-General of certain powers with respect to Reserve Bank.

20 150. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage.

25 151. 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 or imposts, whether local or general, imposed by a Province or Federated State.

Exemption of certain property from taxation.

30 152. Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

Adjustment in respect of certain expenses and pensions.

35 (a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or

40 (b) in the case of a charge on the revenues of a Province, the court or commission serves any

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—cont.

of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,

there shall be charged on and paid out of the revenues of 5
the Province or, as the case may be, the revenues of the
Federation or of the other Province, such contribution in
respect of the expenses or pension as may be agreed,
or as may in default of agreement be determined by
an arbitrator to be appointed by the Chief Justice of 10
India.

Duty of
Federation
and Pro-
vinces to
supply
Secretary of
State with
funds.

153. The Federation and every Province shall secure
that there are from time to time in the hands of the
Secretary of State sufficient moneys to enable him to
make such payments as he may have to make in respect 15
of any liability which falls to be met out of the revenues
of the Federation or of the Province as the case may be.

Provisions
as to rela-
tion of
Burma
monetary
system with
India.

154. His Majesty in Council may make such
provision as may appear to him to be necessary or proper
for the purpose of giving effect to any arrangements with 20
respect to the monetary system of Burma in its relations
with India and matters connected therewith and ancillary
thereto, being arrangements made before the commence-
ment of Part III of this Act with the approval of the
Secretary of State by the Governor of Burma in Council 25
with the Governor-General in Council or any other
persons.

Relief in
respect of
tax on in-
come taxable
both in
India and
Burma.

155. His Majesty in Council may make provision for
the grant of relief from any Federal tax on income in
respect of income taxed or taxable in Burma. 30

Provisions
as to
customs
duties, &c.

156. With a view to preventing undue disturbance
of trade between India and Burma in the period imme-
diately following the separation of India and Burma and
with a view to safeguarding the economic interests of
Burma during that period, His Majesty in Council may 35
give such directions as he thinks fit for those purposes
with respect to the duties which are, while the Order is in
force, to be levied on goods imported into or exported
from India or Burma and with respect to ancillary and
related matters. 40

CHAPTER II.

BORROWING AND AUDIT.

A.D. 1935.

PART VII.
—cont.

Borrowing.

157. Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this subsection affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

Cessation of borrowing by Secretary of State in Council.

158. Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits as may be so fixed.

Federal Government may borrow on security of federal revenues.

159.—(1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits as may be so fixed.

Provincial Governments may borrow on security of provincial revenues.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council.

A consent under this subsection may be granted subject to such conditions, if any, as the Federation may think fit to impose.

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PART VII.
—cont.

(4) A consent required by the last preceding subsection shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable. and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final.

Loans by
Federal
Government
to States.

160. The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or give guarantees in respect of loans raised by, any Federated State.

Application
of Colonial
Stock Acts
to stocks
issued by
Federation.

161.—(1) The Colonial Stock Acts, 1877 to 1900 shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with with respect to all such stock so issued by the Federation.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

(3) In paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, the words "or any other securities the interest in sterling whereon is payable out of, and charged on, the revenues of India" shall be repealed:

Provided that, notwithstanding anything in this Act, any securities which by virtue of the said words

were immediately before the commencement of Part III ^{A.D. 1935.}
of this Act securities in which a trustee might invest ^{PART VII.}
trust funds shall continue to be securities in which a ^{—cont.}
trustee may invest such funds.

5

Audit and Accounts.

162.—(1) There shall be an Auditor-General of ^{Auditor-General of}
India, who shall be appointed by His Majesty and shall ^{India.}
only be removed from office in like manner and on the
like grounds as a judge of the Federal Court.

10 (2) The conditions of service of the Auditor-General
shall be such as may be prescribed by His Majesty in
Council, and he shall not be eligible for further office
under the Crown in India after he has ceased to hold his
office:

15 Provided that neither the salary of an Auditor-
General nor his rights in respect of leave of absence,
pension or age of retirement shall be varied to his dis-
advantage after his appointment.

(3) The Auditor-General shall perform such duties
20 and exercise such powers in relation to the accounts
of the Federation and of the Provinces as may be pre-
scribed by, or by rules made under, an Order of His
Majesty in Council, or by any subsequent Act of the
Federal Legislature varying or extending such an Order:

25 Provided that no Bill or amendment for the purpose
aforesaid shall be introduced or moved without the
previous sanction of the Governor-General in his
discretion.

(4) The salary, allowances and pension payable to
30 or in respect of an Auditor-General shall be charged on
the revenues of the Federation.

163.—(1) If a Provincial Legislature after the ^{Provincial}
expiration of two years from the commencement of ^{Auditor-}
Part III of this Act passes an Act charging the salary ^{General.}
35 of an Auditor-General for that Province on the
revenues of the Province, an Auditor-General of the
Province may be appointed by His Majesty to perform
the same duties and to exercise the same powers in
relation to the audit of the accounts of the Province as
40 would be performed and exercised by the Auditor-General

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PART VII.

—cont.

of India, if an Auditor-General of the Province had not been appointed:

Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the 5 Provincial Legislature by which provision is made for an Auditor-General of that Province.

(2) The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province as they apply in relation to the Auditor-General of 10 India, subject to the following modifications, that is to say—

- (a) a person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India; 15
- (b) in subsection (3) of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a 20 reference to the Governor; and
- (c) in subsection (4) of the said section for the reference to the revenues of the Federation there shall be substituted a reference to the revenues of the Province: 25

Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.

Power of Auditor-General of India to give directions as to accounts.

164. The accounts of the Federation shall be kept 30 in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which 35 any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

Audit reports.

165. The reports of the Auditor-General of India relating to the accounts of the Federation shall be sub- 40 mitted to the Governor-General, who shall cause them

to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

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PART VII.

—cont.

166.—(1) There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

Auditor of
Indian
Home
Accounts.

(2) The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion :

15 Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to expenditure in the United Kingdom from the revenues of the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion.

30 (4) The reports of the Auditor of Indian Home Accounts relating to such expenditure as aforesaid shall be submitted to the Auditor-General of India, or in the case of expenditure from the revenues of a Province which has an Auditor-General, to the Auditor-General of the Province, and shall be included by any such Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor-General or, as the case may be, to the Governor.

40 (5) The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

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PART VII.
—cont.

(6) The salary, allowances and pension payable to or in respect of the Auditor of Indian Home Accounts shall be charged on the revenues of the Federation.

(7) His Majesty in Council may require the Auditor of Indian Home Accounts to perform in relation to Burma 5 all or any of the functions which he performs in relation to India, and may fix the payments to be made in respect of his services from the revenues of Burma to the revenues of the Federation, and may make such incidental and consequential provision as may appear to him to be 10 proper.

Audit of
accounts
relating
to the
discharge of
the functions
of the
Crown in
relation to
Indian
States.

167. The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or in so far as those accounts concern expenditure in the 15 United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf. 20

CHAPTER III.

PROPERTY, CONTRACTS, LIABILITIES, AND SUITS.

Vesting of
lands and
buildings.

168.—(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 25 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 at that date used for purposes 30 of the Governor-General in Council, otherwise than under a tenancy agreement between him and the Government of that Province;
- (b) in the case of lands and buildings which are situate in a Province but do not by virtue of the 35 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 40

government of the Federation or for the purposes of the exercise of the function of the Crown in its relations with Indian States, according to the purpose for which they were used at the said date: and

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PART VII.

—cont.

(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 at that date 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 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.

(4) 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.

169.—(1) Subject to the provisions of this and the last preceding section, all property which, by virtue of any delegation from the Secretary of State in Council or otherwise, is immediately before the commencement of Part III of this Act, in the possession or under the control of the Governor-General in Council or of any Local Government

Provisions
as to other
property.

A.D. 1935.

PART VII.

—cont.

for the purposes of the Government of India or of that Local Government shall on and after that date be deemed to be in the possession or under the control of the Federation or of the corresponding Province under this Act, as the case may be, and all credits and debits of any Local Govern- 5 ment in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

(2) Subject as aforesaid, all property held by the 10 Secretary of State in Council immediately before the commencement of Part III of this Act for the purposes of the government of India shall on and after that date be held by the Secretary of State for the purposes of the Federation, or of such of the Provinces, if any, as he may 15 determine, according to the circumstances of the case.

(3) Subject to the provisions of the last preceding section, all property which immediately before the commencement of Part III of this Act is held by the Secretary of State in Council for purposes connected with 20 the discharge of the functions of the Crown in its relations with Indian States, or is by virtue of any delegation from him or otherwise in the possession or under the control of the Governor-General in Council for those purposes, shall be vested in His Majesty for the same purposes. 25

(4) In this section "property" includes moneys, securities, bank balances, and movable property of any description.

(5) Nothing in this section applies to any property which, by virtue of any delegation from the Secretary of 30 State in Council or otherwise, is, immediately before the commencement of Part III of this Act, in the possession or under the control of the Governor of Burma, or any credits or debits of the Governor of Burma in Council in account with the Governor-General in Council. 35

(6) Nothing in this section shall affect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa or Sind.

170.—(1) The executive authority of the Federation 40 and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition

Power to
acquire
property
and to

or mortgage of any property vested in His Majesty for ^{A.D. 1935.} the purposes of the government of the Federation or ^{PART VII.} of the Province, as the case may be, and to the purchase ^{—cont.} or acquisition of property on behalf of His Majesty for ^{make} those purposes respectively, and to the making of ^{contracts,} contracts : &c.

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
 10 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
 15 functions of the Crown in its relations with Indian States, as the case may be, shall vest in His Majesty for those purposes.

(3) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be
 20 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
 25 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
 30 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.

171.—(1) The Federation may sue or be sued by ^{Suits and}
 35 the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or
 40 a Provincial Legislature, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed. ^{proceedings.}

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PART VII.
—cont.

(2) Rules of court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules. 5

Existing
contracts
of Secretary
of State in
Council.

172.—(1) Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract made before the commencement of Part III of this Act by, or on behalf of, the Secretary of State in Council shall, as from that date— 10 .

(a) if it was made in connection with the affairs of a Province, have effect as if it had been made on behalf of that Province; and 15

(b) in any other case have effect as if it had been made on behalf of the Federation,

and any such contract may be enforced in accordance with the provisions of the next but one succeeding section. 20

(2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden.

Special
provisions
as to
existing
loans, guar-
antees and
other
financial
obligations.

173.—(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. 25 30

(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 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. 35

(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 40

any payment of principal or interest in respect 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.

174.—(1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of Part III of this Act or arising under any contract or statute made or passed before that date, be brought against the Federation or a Province, according to the subject matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the Secretary of State, out of such revenues as the Secretary of State may direct.

Legal proceedings as to certain matters.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned therein as they apply in relation to the contracts so mentioned.

(2) If at the commencement of Part III of this Act any legal proceedings 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

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PART VII.
—cont.

substituted in those proceedings for the Secretary of State in Council, and the provisions of subsection (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceedings as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said subsection (1). 5 10

(3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secretary of State after the commencement of Part III of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State and any such proceedings may be brought accordingly, and any sum ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred by the Secretary of State in or in connection therewith, shall be paid out of the revenues of the Federation or the Province, as the case may be. 15 20

(4) Nothing in this section shall be construed as imposing any liability upon the Exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of subsection (1) of the last preceding section. 25

(5) This section does not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden. 30

PART VIII.

THE FEDERAL RAILWAY AUTHORITY.

Executive
authority in
respect of
railways to
be exercised
by Federal
Railway
Authority.

175. The executive authority of the Federation in respect of the construction, maintenance and operation of railways in India shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority"). 35 40

Subject to the provisions of this Act, such executive authority shall, in relation to railways operated by

railway companies under contracts with the Secretary of State in Council, extend to the exercise of all such powers in relation to construction, maintenance and operation, as immediately before the commencement of Part III of this Act were exercisable by, or on behalf of, the Secretary of State in Council or the Governor-General in Council.

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PART VIII.
—cont.

176.—(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.

Composi-
tion, &c. of
Railway
Authority.

(2) Subject as aforesaid, the provisions of the Eighth 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.

177.—(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.

Directions
and princi-
ples to
be observed
by Railway
Authority.

(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.

(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,

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PART VIII
—cont.

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.

Conduct of
business
between
Railway
Authority
and
Federal
Govern-
ment.

178.—(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.

Acquisition
and sale of
land by, and
contracts
and liabilities
of, the
Railway
Authority.

179.—(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 acquire that land on their behalf and at their expense.

(2) Contracts made by or on behalf of the Authority shall be enforceable against the Authority and not 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 : A.D. 1935.
PART VIII.
—cont.

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.

180.—(1) The Authority shall establish, maintain and control a fund (which shall be known as the “Railway Fund”) and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund : Finance of
the Railway
Authority.

Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the authority on revenue account in any financial year shall be applied in—

- (a) defraying working expenses;
- (b) meeting payments due under contracts or agreements to railway undertakings;
- (c) paying pensions, and interest and bonuses on, and contributions to, provident funds;
- (d) making due provision for maintenance, renewals, improvements and depreciation;
- (e) making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make; and
- (f) defraying other expenses properly chargeable against revenue in that year.

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PART VIII.
—cont.

(3) Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the railway authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.

Provisions
as to certain
obligations
of the
Railway
Authority.

181.—(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 pay to any province such sums as may be equivalent to the expenses incurred by that Province in the provision of police required for the maintenance of order on railway premises, and any question which may arise between the Authority and a Province as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

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PART VIII.

—cont.

182. Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

Investment
of funds.

183.—(1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and shall be entitled to receive, or to be credited with, interest at such rate as may be agreed, or, in default of agreement, determined by the Governor-General in his discretion, on the untransferred balances or any such funds.

Special
provisions
as to certain
funds.

(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.

184.—(1) The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India.

Audit and
annual
reports.

(2) The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

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PART VIII.
—cont.Railway
Rates
Committee.

185. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee. 5

Bills and
Amendments
for regu-
lating rates
and fares
to require
recom-
mendation
of Governor-
General.

186. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General. 10

Provisions
for settle-
ment of
questions
arising
between the
Railway
Authority
and the
owners of
railways in
Indian
States.

187.—(1) If any question arises between the Authority and the Ruler of a Federated State who is the owner of a railway in that State as to whether the Authority are so exercising, or are proposing so to exercise, their powers, whether in relation to the construction of new lines or otherwise, as to refuse reasonable facilities for the traffic of that railway, or to discriminate unfairly, by the granting of undue preferences or otherwise, against that railway, or to subject it to unfair or uneconomic competition, that question shall, if either party so desire, be referred to a tribunal constituted in accordance with the provisions hereinafter contained, and no Court shall have jurisdiction to entertain any question which might under this section have been so referred. 15
20
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(2) The Governor-General in his discretion shall from time to time appoint a person, qualified as hereinafter mentioned to be the chairman of all tribunals which it may be necessary to constitute for the purposes of this section during that person's term of office, and the tribunal to which any question arising under this section is to be referred shall consist of that chairman and four other members, of whom two shall be appointed by the Governor-General in his discretion and one by each of the parties to the dispute : 30
35

Provided that the failure of either party to make such an appointment shall not invalidate the constitution or proceedings of the tribunal.

(3) The tribunal shall give to the Authority and to the Ruler of the State, and to such other persons as they think fit, an opportunity of being heard, and the decision of a majority of the members of the tribunal, 40

or, if the members are equally divided in opinion, the decision of the Chairman, shall be the decision of the tribunal.

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PART VIII.

—cont.

(4) A person shall not be qualified to be appointed as the chairman of tribunals under this section unless he has held, or is qualified to hold, office as a judge of the Federal Court.

(5) The Federal Court shall have jurisdiction to entertain an appeal on the ground that a question of law has been wrongly decided by a tribunal constituted for the purposes of this section, but, save as aforesaid, no appeal shall lie from a decision of such a tribunal, nor shall any appeal lie from the decision of the Federal Court upon an appeal brought to that Court under this subsection.

(6) Any Act of the Federal or any Provincial Legislature, or any law of a Federated State, which is inconsistent with a decision of a tribunal constituted under this section, or, as the case may be, with such a decision as varied by the Federal Court, shall, whether the Act was passed or the law was made before or after the date of the decision, be invalid to the extent of the inconsistency.

188.—(1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

Saving for certain existing rights of railway companies.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the contract contains a provision that such a dispute shall be referred to the Secretary of State in Council and that the railway company if dissatisfied with his decision may require the dispute to be referred to arbitration, that provision shall have effect with the substitution of the Secretary of State for the Secretary of State in Council, and accordingly the Federal Government shall refer the dispute to the Secretary of State, and the Authority and the Federal Government shall give effect to any decision

A.D. 1935. which the Secretary of State may give, or to any award
 PART VIII. which an arbitrator may make, in the matter.

—cont.

The Secretary of State shall not take any action or give any decision under this section except with the concurrence of his advisors.

Official
 directors of
 Indian
 railway
 companies.

189. Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

PART IX.

THE JUDICATURE.

CHAPTER I.

THE FEDERAL COURT.

Establish-
 ment and
 constitution
 of Federal
 Court.

190.—(1) There shall be a Federal Court consisting 15 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 20 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 30 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 35 that the judge ought on any such ground to be removed.

See para 323
 of the G. P.C.
 Report 1934.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

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PART IX.

—cont.

5 (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

10 (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.

15 In computing for the purposes of this subsection 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
20 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
25 set out in that behalf in the Fourth Schedule to this Act.

191. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling
30 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:

Salaries,
&c. of
judges.

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be
35 varied to his disadvantage after his appointment.

192. 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
40 appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed

Temporary
appoint-
ment of
acting Chief
Justice.

A.D. 1935.

PART IX.

—cont.

Seat of
Federal
Court.Original
jurisdiction
of Federal
Court.Appellate
jurisdiction
of Federal
Court in
appeals
from High
Courts in
British
India.

by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

193. The Federal Court shall be a court of record and shall sit in Delhi and at such other place or 5 places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

194.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, 10 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 a matter of legal right: 15

Provided that the said jurisdiction shall not extend to a dispute arising under any agreement, if the agreement otherwise expressly provides, or to a dispute to which a State is a party, unless the dispute concerns the applica- 20 tion or interpretation of this Act or any Order in Council made thereunder, or concerns some matter with respect to which the Federal Legislature has power to make laws in relation to that State.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than 25 a declaratory judgment.

195.—(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the 30 application or interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate 35 accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could 40 have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the

leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

A.D. 1935.

PART IX.
—cont.

196.—(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 British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

Power of
Federal
Legislature
to enlarge
appellate
jurisdiction.

10 (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
15 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.

20 (2) If the Federal Legislature makes such provision
as is mentioned in the last preceding subsection, con-
sequential 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
25 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
30 without the previous sanction of the Governor-General in
his discretion.

197.—(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 with respect to the application or
35 interpretation of this Act or any Order in Council made
thereunder has been wrongly decided.

Appellate
jurisdiction
of Federal
Court in
appeals
from High
Courts in
Federated
States.

(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
40 require a case to be so stated, or may return any case
so stated in order that further facts may be stated
therein.

A.D. 1935.

PART IX.

—cont.

Appeals to
His Majesty
in Council.

198.—(1) An appeal may be brought to His Majesty in Council from a decision of the Federal Court by leave of the Federal Court or of His Majesty in Council.

(2) Nothing in this Part of this Act shall be construed as derogating from any prerogative right of His Majesty to grant special leave to appeal in any criminal case.

Form of
judgment
on appeal.

199. 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.

Enforcement of
decrees and
orders of
Federal
Court.

*** 200.**—(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 or 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.

Letters of
request to
Federated
States.

201. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, 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.

** Sir Thomas Inskip, Attorney-General, replied to Viscount Wolmer that an order would be enforced by the Prince's own Court. It was a method which would secure proper recognition of the Princes' Sovereignty.*

* Mr. Churchill expressed the opinion that the Federal States should
realise that they were subscribing not merely to the Federal
[25 GEO. 5] Government of India.
Constitution, but to the continuing process of the case.

* 202. The law declared by the Federal Court and by A.D. 1935.
any judgment of the Privy Council shall, so far as appli- PART IX.
cable, be recognised as binding on, and shall be followed -cont.
by, all courts in British India, and, so far as respects the Law de-
5 application and interpretation of this Act or any Order in Federal
Council thereunder or any matter with respect to which Court and
the Federal Legislature has power to make laws in Privy
relation to the State, in any Federated State. Council to
be binding
on all courts.

203. If at any time it appears to the Governor- Power of
10 General that a question of law has arisen, or is likely to Governor-
arise, which is of such a nature and of such public General to
importance that it is expedient to obtain the opinion of consult
the Federal Court upon it, he may in his discretion refer Federal
the question to that court for consideration, and the court Court.
15 may, after such hearing as they think fit, report to the
Governor-General thereon.

204.—(1) The Federal Court may from time to Rules of
time, with the approval of the Governor-General in his court, &c.
discretion, make rules of court for regulating generally the
20 practice and procedure of the court, including rules as to
the time within which appeals to the court are to be enter-
ed, as to the costs of and incidental to any proceedings in
the court, and as to the fees to be charged in respect of
proceedings therein, and in particular may make rules
25 providing for the summary determination of any appeal
which appears to the court to be frivolous or vexatious
or brought for the purpose of delay.

(2) Rules made under this section may contain
provisions enabling the Federal Court to sit in two or
30 more divisions, and may specify the division in which in
cases of any specified class the jurisdiction of the court is
to be exercised and may fix the minimum number of
judges who shall compose that division, so however
that no case shall be heard before less than three judges.

35 (3) Subject to the provisions of any rules of court,
the Chief Justice of India shall determine what judges
are to constitute any division of the court and what
judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal
40 Court save in open court and 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

-making decisions by the Federal Court. Sir Samuel Hoare
replied that it was never suggested by the Provinces or
their representatives that the Federal Court should
not interpret the Constitution Act. (2.4.35)

*Sir Donald Somervell moved two amendments to clause 24.
That the Federal Court must sit in two divisions - one
116
dealing with constitutional matters and the other dealing
with extra-appellate work. (2.4.35.)*

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PART IX.
—cont.

a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

Powers of
Federal
Legislature.

205. The Federal Legislature may make provision 5
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 10
it by or under this Act.

Expenses of
Federal
Court.

206.—(1) The administrative expenses of the Federal
Court, including all salaries, allowances and pensions
payable to or in respect of the officers and servants of
the court, shall be charged upon the revenues of the 15
Federation, and any fees or other moneys taken by the
court shall form part of those revenues.

(2) The Governor-General shall exercise his indi-
vidual judgment as to the amount to be included in
respect of the administrative expenses of the Federal 20
Court in any estimates of expenditure laid by him before
the Chambers of the Federal Legislature.

Construc-
tion of
references
to High
Courts in
States.

207. 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 25
may, after communication with the Ruler of the State,
declare to be a High Court for the purposes of that
provision.

Savings.

208. Nothing in this chapter shall be construed as
conferring, or empowering the Federal Legislature to 30
confer, any right of appeal to the Federal Court in any
case in which a High Court in British India is exercising
jurisdiction on appeal from a court outside British
India, or as affecting any right of appeal in any such
case to His Majesty in Council with or without leave. 35

CHAPTER II.

THE HIGH COURTS IN BRITISH INDIA.

Meaning of
"High
Court".

209.—(1) The following courts shall in relation to
British India be deemed to be High Courts for the pur-
poses of this Act, that is to say, the High Courts in 40

* Mr. Campbell's amendment that all High Courts should be Federal rather than Provincial was rejected by 27 votes to 41.
[25 GEO. 5.] Government of India. 117 (2.4.35.)

Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, and the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any

5 other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act.

10 (2) The provisions of this chapter shall apply to every High Court in British India.

* 210.—(1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time
15 deem it necessary to appoint: Constitution of High Courts.

Provided that the judges so appointed together with any additional judges appointed by the Governor in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number
20 as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High 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 years:

25 Provided that—

(a) a judge may by resignation under his hand addressed to the Governor 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
30 be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

(a) 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
40 ten years' standing; or

* The question whether supervision of High Courts should be Provincial or Federal, was debated in an amendment to clause 210 designed to secure Federal administrative control. Sir Samuel Hoare explained why the select committee had

Central Govt. would no longer be a unitary govt. (1) there would be no danger for the Provinces regarding High Courts as isolated and imposed by the Federation.

(2.4.35) 118 *Sagunad: (i) Government of India. [25 GEO. 5.]*

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PART IX.

—cont.

the appointment of a Judge making
(2) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or

(c) has for at least five years held a judicial office in 5
British India not inferior to that of a subordinate judge, or judge of a small cause court; or

(d) has for at least ten years been a pleader of any
High Court, or of two or more such Courts in succession.

10

In computing for the purposes of this subsection 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 the person has held judicial office, after he became a barrister, a member 15
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 a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed 20
by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

Salaries, &c.,
of judges.

211. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment 25
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 30
be varied to his disadvantage after his appointment.

Temporary
and additional
appointments.

212.—(1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, 35
until some person appointed by His Majesty to the vacant office has entered on the duties thereof, 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 of the Province may in his discretion think fit to appoint for the purpose.

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PART IX.
—cont.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor of the Province may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor in his discretion thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor that the number of the judges of the court should be for the time being increased, the Governor in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

213.—(1) Subject to the provisions of this Part of this Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of the powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act:

Jurisdiction
of existing
High
Courts.

Provided that no High Court shall have any greater powers of superintendence over any subordinate courts than are together conferred by any letters patent, any such Act as aforesaid, any existing Indian law, and the next succeeding section.

** Sir Thomas Inskip accepted an amendment empowering the High Court to direct the transfer of any suit of appeal from a Court subject to its appellate jurisdiction, to any other Court of appeal or Superior Court.*
Government of India. [25 GEO. 3.]
 A.D. 1935.

PART IX.
—cont.

Adminis-
trative
functions of
High
Courts.

214. Every High Court shall have administrative superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

5

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

Jurisdiction
in revenue
matters.

215.—(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

Proceedings
of High
Courts to be
in English.

216. All proceedings in every High Court shall be in the English language.

Expenses of
a High
Court.

217.—(1) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

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PART IX.
—cont.

5 **218.**—(1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

Power of
His Majesty
to constitute
or recon-
stitute
High Court
by letters
patent.

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation.

219.—(1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

Extra-
provincial
jurisdiction
of High
Courts.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

(a) as empowering the Legislature of the Province in which the Court has its principal seat to

A.D. 1935.

PART IX.

—cont.

increase, restrict or abolish that jurisdiction;
or

- (b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area. 5

Saving and
definitions.

220.—(1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed. 15

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the Governor-General. 20 25

PART X.

30

THE SERVICES OF THE CROWN IN INDIA.

CHAPTER I.

DEFENCE SERVICES.

Pay, &c., of
Commander-in-Chief.

221. The pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service shall be such as His Majesty in Council may direct. 35

222. (1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct.

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PART X.
—cont.

5 (2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.

Control of
His Majesty
as to
defence
appoint-
ments.

223. The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

Eligibility
for com-
missions in
Indian
Forces.

224. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval

Control of
Secretary of
State with
respect to
conditions
of service.

225. Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

Saving of
rights of
appeal.

226. Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

Pay, &c., of
members of
forces to be
charged on
Federal
revenues.

227. The provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces, hold, or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with

Provisions
as to certain
civilian
personnel.

A.D. 1935. defence, as they apply in relation to persons who are,
 PART X. or have been, members of those forces.
 —cont.

King's
 India
 cadetships.

228. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of 5 persons who have served in India in the military or civil service of the Crown.

In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or 10 in Aden before their respective separations from India.

CHAPTER II.

CIVIL SERVICES.

General Provisions.

Tenure of
 office of
 persons
 employed
 in civil
 capacities
 in India.

229.—(1) Except as expressly provided by this Act, 15 every person who is a member of a civil service of the Crown in India or holds any civil post under the Crown in India holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority sub- 20 ordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him : 25

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a 30 person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause. 35

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His

Majesty's pleasure, any contract under which a person, ^{A.D. 1935.}
not being a member of a civil service of the Crown in ^{PART X.} India, is appointed under this Act to hold such a post ^{—cont.}
may, if the Governor-General, or, as the case may be,
5 the Governor, deems it necessary in order to secure the
services of a person having special qualifications, provide
for the payment to him of compensation if before the
expiration of an agreed period that post is abolished
or he is, for reasons not connected with any misconduct
10 on his part, required to vacate that post.

• **230.**—(1) Except as expressly provided by this Act, <sup>Recruit-
ment and
conditions
of service.</sup>
appointments to the civil services of, and civil posts
under, the Crown in India, shall, after the commencement
of Part III of this Act, be made—

- 15 (a) in the case of services of the Federation, and
posts in connection with the affairs of the
Federation, by the Governor-General or such
person as he may direct;
20 (b) in the case of services of a Province, and posts in
connection with the affairs of a Province, by
the Governor or such person as he may
direct.

(2) Except as expressly provided by this Act, the
conditions of service of persons serving His Majesty in
25 a civil capacity in India shall, subject to the provisions
of this section, be such as may be prescribed—

- 30 (a) in the case of persons serving in connection with
the affairs of the Federation, by rules made by
the Governor-General or by some person or
persons authorised by the Governor-General
to make rules for the purpose;
35 (b) in the case of persons serving in connection with
the affairs of a Province by rules made by the
Governor of the Province or by some person or
persons authorised by the Governor to make
rules for the purpose.

(3) The said rules shall be so framed as to
secure—

- 40 (a) that, in the case of a person who before the
commencement of Part III of this Act was

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PART X.
—cont.

serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been 5 competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;

(b) that every such person as aforesaid shall have 10 the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service 15 are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the 20 commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in 25 that respect;

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or 30 a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty 35 in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act :

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required 40

to be given to him by the provisions of the last preceding subsection. A.D. 1935.

PART X.
—cont.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

231.—(1) In its application to appointments to and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority. Application of preceding section to railway services, and officials of courts.

(2) In framing rules for the regulation of recruitment to superior railway posts the Federal Railway Authority shall consult the Federal Public Service Commission, and in the recruitment of officers generally shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing so far as practicable to each community in India a fair representation in the railway services of the Federation, but save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission.

(3) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5)

A.D. 1935. there were substituted a reference to the chief justice
PART X. of the court:

—cont.

Provided that—

- (a) in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be; 10.
- (b) rules made under the said subsection (2) by a chief justice shall, so far as they relate to salaries or pensions, require the approval of the Governor-General, or as the case may be the Governor. 15

Special provisions as to police.

232. Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively. 20

Recruitment by Secretary of State and provisions as to certain posts.

Services recruited by Secretary of State.

233.—(1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last-mentioned service shall thereafter be known as “the Indian Police”) shall be made by the Secretary of State. 25 30

(2) The Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion. 35

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each 40

year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

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PART X.
—cont.

234. If, after the commencement of Part III of this Act, circumstances arise which in the opinion of the Secretary of State render it necessary for him so to do in order to secure in any Province efficiency in irrigation, he may appoint persons to any civil service of, or civil post under, the Crown in India, concerned with irrigation.
- 235.—(1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion), which are normally to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—
- (a) be kept vacant for more than three months; or
 - (b) be filled otherwise than by the appointment of such a person as aforesaid; or
 - (c) be held jointly with any other such post.
- (2) Appointments to the said posts (hereafter in this Part of this Act referred to as “reserved posts”) shall—
- (a) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment;
 - (b) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.
- (3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

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PART X.
—cont.Conditions
of service,
pensions,
&c. of
persons
recruited by
Secretary of
State.

236.—(1) The conditions of service of all persons appointed to a civil service by the Secretary of State shall—

- (a) as respects pay, leave and pensions, be such as may be prescribed by rules to be made by the Secretary of State: 5
- (b) as respects other matters with respect to which express provision is not made by this chapter be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose: 10 15 20

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service. 25

(2) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province. 30

(3) Pensions payable to or in respect of any such person as aforesaid, and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation. 35

(4) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State. 40

(5) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable:

Provided that where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

237.—(1) If any person appointed to a civil service by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General, and if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him in his discretion to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid or affects adversely his emoluments or rights in respect of pension or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

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PART X.

—cont.

Rights in
respect of
complaints,
appeals, &c.

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PART X.
—cont.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

Compensation for loss of rights.

238.—(1) If by reason of anything done under this Part of this Act the conditions of service of any person appointed to a civil service by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

Application of four last preceding sections to persons appointed by Secretary of State in Council, persons holding reserved posts.

239.—(1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India as they apply in relation to persons appointed to a civil service by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the

Secretary of State may decide, also apply in relation to any person who—

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PART X.
—cont.
and com-
missioned
officers in
civil em-
ployment.

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or

(b) holds or has held any civil post under the Crown in India and is or was when he was first appointed to such a post an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, etc., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of subsection (1) thereof and in subsection (5) thereof there were substituted a reference to the Federal Railway Authority.

Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts.

240. The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India:

Staff of
High Com-
missioner
and Home
Auditor.

Provided that—

(a) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him

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PART X.
—cont.

subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and

(b) in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion. 5

Conditions
of service
of staff of
High Com-
missioner
and
Auditor of
Indian
Home
Accounts.

241.—(1) All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be, or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts. 10

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service, as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed. 15 20

(3) The salaries, allowances and pensions payable to, or in respect of, such of the persons as aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature. 25 30

Judges of
the Federal
Court and
the High
Courts.

Special Provisions as to Judicial Officers.

242.—(1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court. 35

Provided that—

(a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court: 40

(b) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court or of any High Court from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to His Majesty to be properly applicable in relation to them.

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PART X.
—cont.

(2) Any pension payable to or in respect of any person who having been a judge of the High Court at Rangoon retired before the commencement of Part III of this Act shall be charged on the revenues of the Federation.

243.—(1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the minister concerned shall before making any recommendation to the Governor as to any such appointment consult the High Court.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he is a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression “district judge” includes additional district judge, joint district judge, assistant district judge, sessions judge and additional sessions judge.

244.—(1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province.

In this section, the expression “subordinate civil judicial service” means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any,

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PART X.
—cont.

as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province. 5 10

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder. 15 20

Subordinate
criminal
magistracy.

245. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to any person save after consultation with the district magistrate of the district in which he is working. 25

Special Provisions as to Political Department.

Members of
political
department.

246.—(1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States. 30

(2) Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as therefore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his advisers. 35 40

(3) Nothing in this section shall be construed A. D. 1935.
 as affecting the application to such persons of the PART X.
 rule of law that, except as otherwise provided by statute, —cont.
 every person employed under the Crown holds office
 5 during His Majesty's pleasure.

Provisions for the protection of certain existing officers.

247.—(1) No civil post which, immediately before Provision for protection of existing officers of "Central Services Class I and II" and "Provincial Services."
 the commencement of Part III of this Act, was a
 post in, or a post required to be held by some member
 10 of, a Central Service Class I, a Central Service Class II,
 or a Provincial Service shall, if the abolition thereof
 would adversely affect any person who, immediately
 before the said date was a member of any such service,
 be abolished, except—

15 (a) in the case of a post in connection with the
 affairs of the Federation, by the Governor-
 General, exercising his individual judgment;

(b) in the case of a post in connection with the
 20 affairs of a Province, by the Governor of the
 Province, exercising his individual judgment:

(2) No rule or order affecting adversely the pay,
 allowances or pensions payable to, or in respect of,
 a person appointed before the coming into operation of
 this Part of this Act to a Central Service Class I or to a
 25 Provincial service, and no order upon a memorial sub-
 mitted by any such person, shall be made except—

(a) in the case of a person who is serving or has
 served in connection with the affairs of the
 Federation, by the Governor-General, exer-
 30 cising his individual judgment;

(b) in the case of a person who is serving or has
 served in connection with the affairs of a Pro-
 vince, by the Governor of the Province, exer-
 cising his individual judgment.

35 (3) In relation to any person mentioned in this section
 who was appointed to a civil service of the Crown in
 India by the Secretary of State or the Secretary of State
 in Council, or is an officer in His Majesty's forces, the
 foregoing provisions of this section shall have effect as if
 40 for the reference to the Governor-General or the Governor,
 as the case may be there was substituted a reference to the
 Secretary of State.

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PART X.
—cont.
Provisions
as to
certain
persons
serving
in or before
1924.

248.—(1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province. 5 10

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation. 15

(3) The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty-four, who before they retired belonged to services or held posts which were as from the said date classified as superior services or posts or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified. 20

General
provisions
as to
persons
retiring
before
commence-
ment of
Part III.

249.—(1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province. 25 30

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I or a Central Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden. 35

Miscellaneous.

Secretary of
State to act
with
approval of
his advisers.

250. The powers conferred by this chapter on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers. 40

* Sir Samuel Hoare agreed to reject clause 231 at the understanding that he would consider whether an alternative clause was necessary, making it clear that the Govt. would not withdraw from the general

25 GEO. 5. Government of India. 139
* 251. His Majesty in Council may transfer to such authority as may be specified in his Order all or any of the powers conferred by this chapter on the Secretary of State with respect to the making of appointments, but nothing in any such Order shall affect the functions of the Secretary of State in relation to persons appointed before the Order comes into operation.

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PART X.
—cont.
Power by Order in Council to transfer certain powers of Secretary of State.

252. If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces or for the creation of posts the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

Joint services and posts.

CHAPTER III.

PUBLIC SERVICE COMMISSIONS.

253.—(1) Subject to the provisions of this section there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

Public Service Commissions.

(2) Two or more Provinces may agree that—

(a) there shall be one Public Service Commission for that group of Provinces; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces;

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

Policy of the Select Committee that an enquiry be held and that changes might occur in the future.

PART X.
—cont.

Composi-
tion and
staff of
Commis-
sions.

(c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs 40

* Replying to points put by a member in clause 253
 Sir Samuel Hoare said that it was the definite view
 of the Select Committee and his advisers in England
 and India that the Commissions should be advisory
 rather than mandatory. He pointed out that the
 Government of India.

[25 GEO. 5.]

of a Province, of the Governor of the Province A.D. 1935.
 in his discretion and, in the case of any other
 appointment, of the Governor-General in his
 discretion.

PART X.
 —cont.

5 *255.—(1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

Functions
 of Public
 Service
 Commis-
 sions.

(2) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally or in any particular class of case or in any particular circumstances it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- 25 (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- 30 (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;
- 35 (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;
- 40

powers of the Civil Service Commission in Britain are strictly limited. (8.4.33)

A.D. 1935.

PART X.
—cont.

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award;

5

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

10

(3) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province.

15

Power to
extend
functions
of Public
Service
Commis-
sions.

256. Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission :

20

Provided that—

(a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or, as the case may be, of the Governor in his discretion; and

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(b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—

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(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State; or

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(ii) where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

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257. The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province:

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PART X.
—cont.Expenses
of Public
Service
Commis-
sions.

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

CHAPTER IV.

CHAPLAINS.

258.—(1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council.

Provisions
as to
chaplains.

(2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province.

This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to

A. D. 1935. the Provincial synod of Lothian and Tweeddale and to
 PART X. the General Assembly of the Church of Scotland.

—cont.

CHAPTER V.

GENERAL.

Indemnity
 for past
 acts.

259.—(1) No proceedings civil or criminal shall be 5
 instituted against any person in respect of any act done
 or purporting to be done in the execution of his duty
 as a servant of the Crown in India or Burma before the
 relevant date, except with the consent, in the case of a .
 person who was employed in connection with the affairs 10
 of the Government of India or the affairs of Burma, of
 the Governor-General in his discretion, and in the case
 of a person employed in connection with the affairs of a
 Province, of the Governor of that Province in his
 discretion. 15

(2) Any civil or criminal proceedings instituted,
 whether before or after the coming into operation of
 this Part of this Act, against any person in respect of any
 act done or purporting to be done in the execution of his
 duty as a servant of the Crown in India or Burma before 20
 the relevant date shall be dismissed unless the court is
 satisfied that the acts complained of were not done in good
 faith, and where any such proceedings are dismissed the
 costs incurred by the defendant shall, in so far as they are
 not recoverable from the persons instituting the proceed- 25
 ings, be charged, in the case of persons employed in
 connection with the functions of the Governor-General
 in Council or the affairs of Burma, on the revenues of the
 Federation, and in the case of persons employed in
 connection with the affairs of a Province, on the revenues 30
 of that Province.

(3) For the purposes of this section—

the expression “the relevant date” means in
 relation to acts done by persons employed
 about the affairs of a Province or about the 35
 affairs of Burma, the commencement of
 Part III of this Act, and in relation to acts
 done by persons employed about the affairs
 of the Federation, the date of the establishment
 of the Federation; 40

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province:

A.D. 1935.
PART X.
—cont.

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

260. Any pension payable to or in respect of a person who—

Exemption
of pensions
from Indian
taxation.

(a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(b) after the commencement of Part III of this Act—

(i) serves in India as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or

(iii) holds a reserved post,

shall be exempt from all taxation imposed by or under any existing Indian law or any law of the Federal or of a Provincial Legislature if the person to whom the pension is payable is residing permanently outside India.

261.—(1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—

Provision
as to
family
pension
funds.

(a) the Indian Military Widows and Orphans Fund;

(b) the Superior Services (India) Family Pension Fund;

(c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those Regulations;

A. D. 1935.

PART X.
—cont.

(d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those Rules,

for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said Regulations and Rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise. 5 10 15

(2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order: 20 25 30

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years.

(3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners, and if any objection is so made in the manner and within the time limited by the Order— 35 40

(a) so much of any money in the hands of the Governor-General as represents the interest of

the objector shall not be transferred to the Commissioners but shall be dealt with as part of the revenues of the Federation; and

A.D. 1935.
PART X.
—cont.

5 (b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

10 (4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the Regulations or Rules relating to the fund in question, provide for the making of such reductions in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

15 (5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom.

(6) In this section—

25 references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any Regulations or Rules which may be substituted therefor;

30 the expression “existing subscribers and beneficiaries” means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the Regulations or Rules, not being persons who have surrendered or forfeited their interest

A.D. 1935.

PART X.

—cont.

in the Fund or, as the case may be, their interest under the Regulations or Rules;

references to pensions payable under the said Regulations or the said Rules do not include references to any supplementary pension payable otherwise than out of the moneys contributed and to be contributed under those Regulations or Rules;

references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the Regulations and Rules relating to any such fund may apply in relation to any such persons as aforesaid.

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His Majesty in Burma, the said Regulations and Rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act.

Transitional provisions.

262. Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil service of the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall then be deemed to be rules made under the appropriate provisions of this Act.

Interpretation, &c.

263.—(1) In this Part of this Act—

the expressions “Central Service Class I,” “Central Service Class II” and “Provincial Service” mean respectively the services which

were immediately before the commencement ^{A.D. 1935.} of Part III of this Act, Central Services ^{PART X.} Class I, Central Services Class II and Provincial Services within the meaning of the classification rules then in force under section ninety-six B of the Government of India Act; and ^{—cont.}

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references to dismissal from His Majesty's service include references to removal from His Majesty's service.

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(2) The Rules Publication Act, 1893, shall not apply to any rules or regulations made under this Part of this Act.

(3) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden, but do include references to persons who after service in Burma or Aden retired from the service of His Majesty before the said date.

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(4) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to members of the public services of any rights provided for them by or under this Act and the safeguarding of their legitimate interests.

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PART XI.

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT.

35 **264.**—(1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice. ^{Advisers to Secretary of State.}

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A.D. 1935.

PART XI.

—cont.

(2) One half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties 5 under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five 10 years and shall not be eligible for reappointment :

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State; 15

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office. 20

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of six hundred pounds a year. 25

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice 30 given to him by them. 35

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least 40 one half of those present at the meeting.

(8) The Council of India as existing immediately before the commencement of Part III of this Act shall be dissolved.

A.D. 1935.
PART XI.
—cont.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

265.—(1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose, either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith.

Existing
accounts of
Secretary of
State in
Council
with Bank
of England.

(2) Any directions, authority or power of attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

266.—(1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.

Organisa-
tion and
expenses of
India
Office.

(2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.

(3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be

A.D. 1935.

PART XI.

—cont.

agreed between the Governor-General and the Treasury in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform. 5

Transfer of
existing
personnel.

267.—(1) All persons who immediately before the commencement of Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State. 10

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 1919, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of and employment by the Secretary of State in Council had at all times been service or employment in a public department the expenses whereof were wholly defrayed out of moneys provided by Parliament: 15 20 25

Provided that the Superannuation Act, 1909, shall not apply in relation to any person so transferred, if that Act (as applicable to persons on the permanent establishment of the Secretary of State in Council) would not have applied to him if this Act had not been passed. 30

(3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council. 35 40

(4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were

immediately before the commencement of Part III of ^{A.D. 1935.} this Act officers or servants employed in the United ^{PART XI.} Kingdom by the Secretary of State in Council shall on ^{—cont.} that date be transferred to the department of the Secretary of State and, for the purposes of the Superannuation Acts, 1834 to 1919, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by the Secretary of State.

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- (5) If the conditions of service of any person to whom the last preceding subsection applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement.

- (6) Notwithstanding anything in the Pensions Commutation Acts, 1877 to 1882, it shall be lawful for the Treasury to commute for a capital sum so much of any superannuation, compensation or retiring allowance as is payable out of moneys provided by Parliament to a person so transferred as aforesaid and for the Secretary of State so to commute so much of any such allowance as is payable to such a person out of the revenues of the Federation.

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- Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.

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- 268.**—(1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to officers and servants transferred by the last preceding section to the department of the Secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation.

Contributions from revenues of Federation.

- 40
- (2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before

A.D. 1935.

PART XI.
—cont.

the commencement of Part III of this Act a member of the staff of the High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from the operation of this Act, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible. 5 10 15

(3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

Liability
for existing
pensions.

269. The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as a member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and those allowances and gratuities shall be charged upon the revenues of the Federation. 20 25 30 35

PART XII.

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MISCELLANEOUS AND GENERAL.

Aden.

Aden.

270.—(1) On such date as His Majesty may by Order in Council appoint (in this section referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden (in this section referred to as "Aden") shall cease to be a part of British India. 40

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden power to make laws for the peace, order and good government of Aden, without prejudice to the power of His Majesty in Council, notwithstanding such delegation, from time to time to make laws for any of the purposes aforesaid.

A.D. 1935.
PART XII.
—cont.

(3) An Order made by His Majesty in Council by virtue of the preceding subsection may, without prejudice to the generality of the words of that subsection, contain provisions with respect to—

- 15 (a) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day;
 - (b) the continuing validity of lawful acts done by any authority in Aden before the appointed day;
 - 20 (c) the validity and continuance of proceedings commenced before the appointed day in any Court of Justice in, or having jurisdiction in, Aden; and
 - 25 (d) the enforcement by or against the Government of Aden of claims which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.
- 30 (4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such
- 35 contribution, if any, as His Majesty in Council may determine shall be paid out of the revenues of Aden towards the expenses of that court.

The Order shall also make provision specifying the cases in which an appeal from that court in India may be brought to His Majesty in Council.

(5) Lands and buildings in Aden which immediately before the separation of Aden from India were vested in

A.D. 1935.

PART XII.
—cont.

His Majesty for the purposes of the Government of India shall as from that date vest in His Majesty for the purposes of the Government of Aden.

New Provinces and alterations of boundaries of Provinces.

Creation of
new Pro-
vinces of
Sind and
Orissa.

271.—(1) As from such date as His Majesty may 5
by Order in Council appoint—

- (a) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind :
- (b) Orissa and such other areas in the Province of 10
Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be specified in the said Order shall be separated from the Presidency of Madras and the Central 15
Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as the Province of Orissa; and
- (c) the Province formerly known as Bihar and 20
Orissa shall be known as the Province of Bihar.

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain—

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- (a) such provisions for their government and administration during the period before Part III of this Act comes into operation;
- (b) such provisions for varying during the said period the composition of the Local Legislature 30
of any Presidency or Province the boundaries of which are altered under this section;
- (c) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal 35
Legislature, are to be in force in, or in any part of, Sind or Orissa respectively;

(d) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities; and

A.D. 1935.
PART XII.
—cont.

5 (e) such supplemental, incidental and consequential provisions.

as His Majesty may deem necessary or proper.

(3) Subject to the provisions of any such Order as aforesaid, the Governor General in Council may, until the date on which Part III of this Act comes into operation, exercise in relation to the Provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in the Government of India Act.

(4) The High Court in Patna shall be the High Court for Orissa until other provision is made under this Act.

20 (5) In this Act the expression "the Legislative Council of the Province" when used in relation to a date before the commencement of Part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

272.—(1) Subject to the provisions of this section, His Majesty may by Order in Council alter the boundary of any Province if, with a view to the creation of a new Province or on other grounds, he deems it expedient so to do :

Alterations
of bound-
aries of
Provinces
and
creation
of new
Provinces.

Provided that, before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

A.D. 1935.

PART XII.

—cont.

(2) An Order made under this section may do any one or more of the following things, that is to say—

- (a) create a new Province;
- (b) increase the area of a Province;
- (c) diminish the area of a Province.

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(3) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper :

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Provided that no such Order shall vary the total membership of either Chamber of the Federal Legislature.

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(4) In this section the expression, "Province" means either a Governor's Province or a Chief Commissioner's Province.

Franchise.

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Power of
His Majesty
to make
provision
with respect
to fran-
chises and
elections.

273. In so far as provision with respect to the matters hereinafter mentioned is not made by this Act; His Majesty in Council may from time to time make provision with respect to those matters or any of them, that is to say—

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- (a) the delimitation of territorial constituencies for the purpose of elections under this Act;
- (b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;
- (c) the qualifications for being elected at such elections as a member of a legislative body or electoral college;
- (d) the filling of casual vacancies in any such body or college;
- (e) the conduct of elections under this Act and the methods of voting thereat;
- (f) the expenses of candidates at such elections;

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- (g) corrupt practices and other offences at or in connection with such elections; A.D. 1935.
- (h) the decision of doubts and disputes arising out of, or in connection with, such elections; PART XII.
—cont.
- 5 (i) matters ancillary to any such matter as aforesaid.

Provisions as to certain legal matters.

274. Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority. Continuation of existing laws.

275. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces. Adaptation of existing Indian laws.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in British India the force of law.

276.—(1) Any power or jurisdiction heretofore exercised on His Majesty's behalf in parts of India outside British India by virtue of the Foreign Jurisdiction Act, 1890, or any Order in Council made under that Act, or otherwise, shall, after the establishment of the Federation, cease to be exercised in any Federated State in relation to any matter with respect to which the Federal Legislature has power to make laws for that State and the subjects thereof, and, subject as aforesaid, shall after the commencement of Part III of this Act be exercised— Foreign jurisdiction.

A.D. 1935.

PART XII.

—cont.

(a) in the tribal areas, by the Governor-General in his discretion; and

(b) in any other part of India, by such person as His Majesty in Council may designate in that behalf.

(2) Subject to the provisions of this section, any 5
Order in Council with respect to the said power or jurisdiction made by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, and all delegations, rules and orders made thereunder, shall continue to be of full force and 10
effect until revoked or amended by any other Order in Council, or by the Governor-General in his discretion, or by the person designated as aforesaid, as the case may be.

(3) An Order in Council made by virtue and in 15
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 20
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 25
authorities sitting or acting outside the territory.

(4) Nothing in this section affects the provisions of this Act with respect to Berar.

Provisions
as to death
sentences.

277.—(1) Where any person has been sentenced to death in a Province, the Governor-General in his dis- 30
cretion 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 35
have any power to suspend, remit or commute the sentence of any person convicted in the Province.

(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 40
pardons, reprieves, respites or remissions of punishment.

278.—(1) No member of the Federal or a Provincial A. D. 1935.
Legislature shall be a member of any tribunal having PART XII.
jurisdiction to entertain appeals in revenue matters. —cont.

(2) If in any Province jurisdiction to entertain such Courts of Appeal in revenue matters.
5 appeals as aforesaid was, immediately before the com-
mencement of Part III of this Act, vested in the Governor
in Council, the Governor shall constitute a tribunal,
consisting of such persons as he in his discretion thinks
fit, to exercise the same jurisdiction until other provision
10 in that behalf is made by Act of the Provincial
Legislature

279.—(1) No subject of His Majesty domiciled in Persons not to be subjected to disability by reason of race, religion, &c.
India shall on grounds only of religion, place of birth,
descent, colour or any of them be ineligible for office
15 under the Crown in British India, or be prohibited on any
such grounds from carrying on any trade, business or
profession in British India.

(2) Nothing in this section shall affect the operation
of any law which—

20 (a) prohibits, either absolutely or subject to
• exceptions, the sale or mortgage of agricultural
land in any particular area to any person not
belonging to some class recognised by the law
as being a class of persons engaged in or
25 connected with agriculture in that area; or

(b) recognises the existence of some right, privilege
or disability attaching to members of a com-
munity by virtue of some personal law or
custom having the force of law.

30 **280.**—(1) No person in British India shall be
deprived of his property save by authority of law. Compulsory acquisition of land, &c.

(2) Neither the Federal nor a Provincial Legislaure
shall have power to make any law authorising the
compulsory acquisition for public purposes of land
35 belonging to private persons, unless the law provides for
the payment of compensation for the property acquired.

(3) No Bill or amendment making provision for the
transference to public ownership of any land or for the
extinguishment or modification of the rights of private
40 persons therein, including rights or privileges in respect
of land revenue, shall be introduced or moved in either

A.D. 1935.

PART XII.
—cont.

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

(5) In this section "land" includes immovable property of every kind and any rights in or over such property.

Protection
of rights of
Jagirdars,
Inamdars,
&c.

281.—(1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant of land or of any right or privilege in respect of land revenue made before the first day of January, one thousand eight hundred and fifty-eight, or made on or after that date for services rendered. 15

(2) Nothing in this section affects any remedy for a breach of any condition on which a grant was made. 20

High Commissioner.

High Com-
missioner
for India.

282.—(1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment. 25

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct. 30

(3) The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation. 35

General Provisions.

Persons
acting as
Governor-
General or
Governor.

283. Any person appointed by His Majesty to act as Governor-General or as the Governor of a Province during the absence of the Governor-General or the Governor from India or during any period during which 40

the Governor-General or the Governor is for any reason A.D. 1935.
 unable to perform the duties of his office shall while he is PART XII
 so acting have all the powers and be subject to all the —cont.
 duties of the Governor-General or Governor as the case may
 5 be and if he holds any other office shall not act therein or
 be entitled to the salary and allowances appertaining
 thereto while he is acting as Governor-General or
 Governor.

284. No proceedings whatsoever shall lie in any No proceed-
 10 court in India against the Governor-General, against ings to lie
 the Governor of a Province, or, subject to the foregoing against
 provisions of Part VII of this Act, against the Secretary Governor-
 of State, whether in a personal capacity or otherwise, in General,
 respect of anything done or omitted to be done by any Governor or
 15 of them during his term of office. Secretary of
 State.

* 285.—(1) Subject to the provisions of this section, Procedure
 if the Federal Legislature or any Provincial Legislature, as respects
 on motions proposed in each Chamber by a minister on proposals
 behalf of the council of ministers, pass a resolution for amend-
 20 recommending any such amendment of this Act or of an ment of
 Order in Council made thereunder as is hereinafter certain pro-
 mentioned, and on motions proposed in like manner, visions of
 present to the Governor-General or, as the case may be, Act and
 to the Governor an address for submission to His Majesty Orders in
 25 praying that His Majesty may be pleased to communicate Council.
 the resolution to Parliament, the Secretary of State shall,
 within six months after the resolution is so communi-
 cated, cause to be laid before both Houses of Parliament
 a statement of any action which it may be proposed to
 30 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 there-
 with a statement of his opinion as to the effect which
 35 the making of the proposed amendment would have on
 the interests of any minority, and the Secretary of State
 shall cause such statement to be laid before Parliament.

(2) The amendments referred to in the preceding
 subsection are—

40 (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

* See para 374-381 of the J.P.C. Report.

A.D. 1935.

PART XII.
—cont.

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 5 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 10. number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature;

(c) any amendment providing that, in the case of women, literacy shall be substituted for any 15 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 on their 20 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 25 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 30 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. 35

(4) His Majesty in Council may at any time, 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 40

of this Act any such amendment as is referred to in A.D. 1935.
subsection (2) of this section :

PART XII.
—cont.

Provided that—

- 5 (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 take such steps as His Majesty may direct for ascertaining the views of
10 the Governments and Legislatures in India who would be affected by the proposed amendment;
- 15 (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.

236.—(1) Subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His
20 Majesty to make in Council under any provision of this Act which expressly authorises the making of such an Order, 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
25 praying that the Order may be made :

Orders in
Council.

Provided that, if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an
30 Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the
35 making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(2) His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the
40 preceding subsection, revoke or vary any Order previously made by him in Council under this Act.

A.D. 1935.

PART XII.

—cont.

Elections may be held in advance of dates fixed for commencement of Parts II and III of Act.

Temporary provisions.

287.—(1) His Majesty may by Order in Council to be made at any time after the passing of this Act provide that the first elections of persons to serve as members of Provincial Legislatures or of the Federal Legislature shall be held in advance on such dates as will enable those Legislatures to be fully constituted in accordance with the provision of this Act before the date fixed for the commencement of Part III of this Act or for the establishment of the Federation, as the case may be. 10

(2) If any such Order as aforesaid is made the Governor-General and the Governors for the time being of Provinces in British India shall have authority to take all such steps and to issue to officers subordinate to them all such orders and directions as may appear to him or them to be necessary or expedient for securing that the object for which the Order is made is attained and in particular, but without prejudice to the generality of the foregoing words— 15

- (a) for the preparation of electoral rolls; 20
- (b) for the formation of electoral colleges;
- (c) with respect to the nomination of candidates; and
- (d) with respect to the holding and method of conducting elections, including primary elections; 25

and it shall be the duty of all officers serving in any capacity under the Crown in India to give effect to any such orders or directions.

The Governor-General shall also request all Rulers of States concerned to give effect to the Order of His Majesty and to take all necessary steps for that purpose. 30

(3) A person shall not be disqualified for being elected or being a member of a Legislature elected under the foregoing provisions of this section by reason of the fact that he holds an office of profit as a non-official member of the Executive Council of the Governor-General or Governor, or as a Minister in a Province. 35

(4) A Legislature elected under the foregoing provisions of this section shall be deemed to be as duly 40

constituted as if the relevant provisions of this Act had A.D. 1935.
been in force at all material dates.

PART XII
—cont.

(5) Nothing in this section affects, or shall be construed as narrowing the interpretation of section thirty-
5 seven of the Interpretation Act, 1889.

288.—(1) The provisions of this section shall have Temporary financial provisions.
effect for the purpose of removing any difficulty which
may arise in securing that sufficient funds shall be
available to enable the administration of a Province
10 or of the Federation to be carried on effectively during
the first year after the commencement of Part III of this
Act or after the establishment of the Federation, as the
case may be.

(2) If it appears to him to be necessary so to do for
15 the purpose of removing any such difficulty as aforesaid,
the Governor of a Province may, with the approval of the
Governor-General, and the Governor-General may, with
the approval of the Secretary of State, declare that
20 any taxes or duties in force immediately before the
commencement of Part III of this Act or immediately
before the establishment of the Federation, as the case
may be, shall, notwithstanding that they would otherwise
expire, continue in force for such further period not
25 exceeding twelve months as he may deem necessary
unless sooner varied or repealed by Act of the appropriate
Legislature, and that all resolutions of a Legislature
assenting before the said date to demands for grants
and all appropriations made before the said date shall
continue to have effect.

30

Interpretation.

289.—(1) In this Act and, unless the context otherwise Interpreta-
requires, in any other Act the following expressions have tion.
the meanings hereby respectively assigned to them, that is
to say :—

35 “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
40 territories of any Indian Ruler under the
suzerainty of His Majesty, all territories under
the suzerainty of such an Indian Ruler, the

A.D. 1935.

PART XII.

—cont.

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; 5

“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 Assam, Bengal and the State of Manipur; 10

“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; 15

“Indian State” includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to a Ruler under the suzerainty of His Majesty and not being part of British India; 20

“Ruler” in relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State. 25

(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 by any Act of the Federal Legislature or of the Indian Legislature relating to income tax; 30

“agricultural land” means land any income from which would be agricultural income; 35

“borrow” includes the raising of money by the grant of annuities and “loan” and “debt” 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; 40

- “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 deductions 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;
- “existing Indian law” means any law, ordinance, order, byelaw, rule or regulation passed or made by any legislature, authority or person in any territories for the time being comprised in India, being a legislature, authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation;
- “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” means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of a person in or formerly in the service of the Crown in India, 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, of subscriptions to a provident fund;
- “pleader” includes advocate; and
- “public notification” means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province.

A.D. 1935.
PART XII.
—cont.

A.D. 1935.

PART XII.
—cont.

(3) 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

(4) References in any Act of Parliament to India or to British India, 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 other authorities in, or to matters relating to the government or administration of, India or British India shall have effect subject to such modifications as His Majesty in Council may direct. 15

(5) Any reference in this Act to Federal Acts or Provincial Acts or to Acts 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. 20

(6) References in this Act to the taking of an oath include references to the making of an affirmation.

PART XIII.

25

TRANSITIONAL PROVISIONS.

Operation of
Part XIII.

290. The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation. 30

Executive
Govern-
ment.

291.—(1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council,

either directly or through officers subordinate to him, but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-
5 General in Council any functions conferred by any existing Indian law on any court, judge or officer or on any local or other authority.

A.D. 1935.

PART XIII.

—cont.

(2) Subject to the provisions of this Act for the time being in force the said executive authority extends—

- 10 (a) to the matters with respect to which the Indian Legislature has, under the said provisions, power to make laws;
- (b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and
15 to the governance of His Majesty's forces in India;
- (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty
20 by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas;

Provided that—

- 25 (i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws;
- 30 (ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent thereto; and
- 35 (iii) commissions in any such forces 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 I of this Act or otherwise.

A.D. 1935.

PART XIII.
—cont.

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references 5 to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances 10 and the context may require.

(4) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States. 15

Control of
the Secre-
tary of
State.

292.—(1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular 20 directions, if any, as may from time to time be given by, the Secretary of State, but the validity of anything done by the Governor-General in Council or the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance 25 with the provisions of this subsection.

(2) The Secretary of State shall not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence 30 of his advisers.

(3) While this Part of this Act is in operation the advisers of the Secretary of State shall not be more than twelve, nor less than eight, in number.

Sterling
loans.

293.—(1) While this Part of this Act is in opera- 35 tion, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the

Secretary of State may, within such limits as may be prescribed by the Act, contract, such loans on behalf of the Governor-General in Council.

A.D. 1935.

PART XIII.

—cont.

(2) The Secretary of State shall not exercise any such powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted—

- 10 (a) in paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, after the words “on the revenues of India”; and
- 15 (b) at the end of sub-paragraph (9) of paragraph (a) of section ten of the Trusts (Scotland) Act, 1921,

the words “or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of India in Council under the provisions of Part XIII of the Government of India Act, 1935.”

20 (4) Any legal proceedings in respect of any loan raised under this section may be brought in the United Kingdom against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

25 294. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as
30 references to the Indian Legislature and laws of the Indian Legislature :

Legislature.

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

35 295.—(1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating

Continuance of certain provisions of Government of India Act.

A.D. 1935.

PART XIII.
—cont.

to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act: 5

Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section.

(2) In the said provisions, the expression "this Act" means the said provisions 10

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the Secretary of State in Council before the commencement of Part III of this Act. 15

Provisions
as to
Federal
Court and
the Federal
Public
Service
Commission.

296. Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established. 20

Rights and
liabilities
of Governor-
General in
Council to
continue
after estab-
lishment of
Federation.

297.—(1) Any rights acquired by, or liabilities incurred by or on behalf of, the Governor-General in Council or the Governor-General between the commencement of Part III of this Act and the establishment of the Federation shall, after the establishment of the Federation, be rights and liabilities of the Federation, and any legal proceedings pending at the establishment of the Federation by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation. 30

(2) The provisions of subsection (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned. 35
40

PART XIV.

A.D. 1935.

BURMA.

CHAPTER I.

INTRODUCTORY.

5 **298.**—(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of his territories in Burma, and all rights, authority
10 and jurisdiction exercisable by treaty, grant, usage, sufferance or otherwise in, or in relation to, any other territories in Burma, 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.

*Government
of Burma
by the
Crown.*

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

CHAPTER II.

THE EXECUTIVE.

The Governor.

25 **299.**—(1) The Governor of Burma is appointed by His Majesty by a Commission under the Royal Sign Manual and has all such powers and duties as are conferred or imposed on him by or under this Act, and such other powers of His Majesty as His Majesty may be
30 pleased to assign to him.

*Appoint-
ment and
functions of
the
Governor.*

35 (2) Any reference in this Act to the functions of the Governor shall be construed as not including a reference to powers exercisable by him by reason that they have been assigned to him by His Majesty under subsection (1) of this section.

A.D. 1935.

PART XIV.
—cont.

(3) The provisions of the Tenth Schedule to this Act shall have effect with respect to the salary and allowances of the Governor, and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office, and with respect to persons appointed to act temporarily as Governor. 5

Executive
authority
of Burma.

300.—(1) Subject to the provisions of this Act, the executive authority of Burma shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Burma Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred on any court, judge or officer, or any local or other authority by any existing Indian or Burman law. 15

(2) The executive authority of Burma extends—

- (a) to the raising in Burma on behalf of His Majesty of naval, military and air forces, and to the governance of His Majesty's forces in Burma; 20
- (b) 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, any areas in Burma which are not part of the territories 25 of His Majesty:

Provided that—

- (i) the said authority does not extend to the enlistment or enrolment in any forces raised in Burma of any person unless he is either a 30 subject of His Majesty or a native of Burma or India or of territories adjacent to Burma or India; and
- (ii) commissions in any such force shall be granted by His Majesty save in so far as he 35 may be pleased to delegate that power by virtue of the provisions of subsection (1) of the first section of this chapter or otherwise.

Administration.

Council
ministers

301.—(1) There shall be a council of ministers, not 40 exceeding ten in number, to aid and advise the Governor

in the exercise of his functions, except in so far as he is ^{A.D. 1935.}
by or under this Act required to exercise his functions ^{PART XIV.}
or any of them in his discretion: ^{—cont.}

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

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

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

20 **302.**—(1) The Governor's ministers shall be chosen and summoned by the Governor, shall be sworn as members of the council, and shall hold office during his pleasure. ^{Other provisions as to ministers.}

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

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

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

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

35 (5) The functions of the Governor 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.

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PART XIV.

—cont.

Discretionary
functions of
Governor.

303.—(1) The functions of the Governor with respect to defence, ecclesiastical affairs, the affairs of the areas specified in Part I of the Eleventh Schedule to this Act, and the control of monetary policy, currency and coinage, and with respect to external affairs, except the relations between Burma and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to areas in Burma which are not part of the territories of His Majesty shall be similarly exercised. 5 10

(2) To assist him in the exercise of those functions the Governor 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. 15

Special
responsibilities
of
Governor.

304.—(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say—

- (a) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof; 20
- (b) the safeguarding of the financial stability and credit of the Government of Burma;
- (c) the safeguarding of the legitimate interests of minorities; 25
- (d) the securing to members of the public services of any right provided 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 v of this Part of this Act are designed to secure in relation to legislation; 30
- (f) the prevention of action which would subject goods of United Kingdom or Indian origin imported into Burma to discriminatory or penal treatment; 35
- (g) the securing of the peace and good government of the areas specified in Part II of the Eleventh Schedule to this Act; 40

(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.

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

305.—(1) The Secretary of State shall lay before Parliament a draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor, 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 Instructions may be issued.

(2) The validity of anything done by the Governor 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.

306. In so far as the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall, subject to the provisions of any Instrument of Instructions issued to him by His Majesty, 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 shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

307.—(1) The Governor may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor's financial adviser to assist by his advice the Governor in the discharge of his special responsibility for safeguarding the financial stability and credit of the Government of

A.D. 1935.
PART XIV.
—cont.

Provisions
as to
Instrument
of Instruc-
tions.

Superinten-
dence of
Secretary
of State.

Financial
adviser to
Governor.

A.D. 1935.

PART XIV.
—cont.

Burma and of his functions in respect of monetary policy, currency and coinage, and also to give advice to the Government of Burma upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor's financial adviser shall hold 5 office during the pleasure of the Governor 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 may determine.

(4) The powers of the Governor with respect to 10 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 : 15

Provided that if the Governor 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.

Advocate-
General.

303.—(1) The Governor shall appoint a person to 20 be Advocate-General for Burma.

(2) It shall be the duty of the Advocate-General to give advice to the Government of Burma upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him. 25

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

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and 30 with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

Provisions
as to police
rules.

309. Where it is proposed that the Governor should by virtue of any powers vested in him make or amend, or approve the making or amendment of, any rules, 35 regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force. 40

310.—(1) If it appears to the Governor that the peace or tranquillity of Burma is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall to such extent as may be specified in the direction be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

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PART XIV.
—cont.
Provisions
as to
crimes of
violence
intended to
overthrow
Govern-
ment.

(2) The functions imposed on the Governor by this section shall be exercised by him in his discretion.

(3) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof.

311. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given by any officer of any police force in Burma to any member of that force except by direction of the Inspector-General of Police, or to any other person except by direction of the Governor in his discretion.

Disclosure
of sources of
information.

312.—(1) All executive action of the Government of Burma shall be expressed to be taken in the name of the Governor.

Conduct of
business of
Govern-
ment.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by him in his discretion after consultation with his ministers, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that the making thereof was not duly authorised.

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PART XIV.
—cont.

(3) The Governor shall make rules for the more convenient transaction of the business of the 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 is by or under this Act required to act in his discretion. 5

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Government as may be specified in the rules or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor. 10 15

(5) In the discharge of his functions under this section the Governor shall act in his discretion after consultation with his ministers. 20

CHAPTER III.

THE LEGISLATURE.

*General.*Constitution
of the
Legislature.

313.—(1) There shall be for Burma a Legislature which shall consist of His Majesty, represented by the Governor, and two Chambers, to be known respectively as the Senate and the House of Representatives. 25

(2) The Senate shall consist of thirty-six members, and the House of Representatives shall consist of one hundred and thirty members. 30

(3) The said members shall be chosen in accordance with the provisions in that behalf contained in the Twelfth Schedule to this Act.

Sessions of
the Legis-
lature, pro-
rogation and
dissolution.

314.—(1) The Chambers of the 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. 35

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

A.D. 1935.
PART XIV.
—cont.

- (a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;
5 (b) prorogue the Chambers;
(c) dissolve either Chamber or both Chambers simultaneously.

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as
10 may be specified in that behalf by His Majesty in Council.

(4) Every Senate, unless sooner dissolved, shall continue for seven years from the date appointed for the first meeting thereof and no longer, and every House of Representatives, unless sooner dissolved, shall
15 continue for five years from the date appointed for the first meeting thereof and no longer, and the expiration of the said period of seven years, or the said period of five years shall operate as a dissolution of the Senate or the House of Representatives, as the
20 case may be.

315.*—(1) The Governor may in his discretion address either Chamber of the Legislature or both Chambers assembled together and for that purpose require the attendance of members.

Right of Governor to address and send messages to Chambers.

25 (2) The Governor may in his discretion send messages to either Chamber of the Legislature, and the 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.

30 **316.** Every minister and every counsellor 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
35 virtue of this section be entitled to vote.

Rights of ministers and counsellors as respects Chambers.

317.—(1) The Senate shall as soon as may be choose two members of the Senate to be respectively President and Deputy-President thereof, and, so often as the office of President or Deputy-President becomes

Election of officers of Chambers.

A.D. 1935.

PART XIV

—cont.

vacant, the Senate shall choose another member to be President or Deputy-President, as the case may be.

(2) A member holding office as President or Deputy-President of the Senate shall vacate his office if he ceases to be member of the Senate, may at any time 5 resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Senate passed by a majority of all the then members of the Senate; but no resolution for the purpose of this subsection shall be moved unless at 10 least fourteen days notice has been given of the intention to move the resolution :

Provided that, whenever the Senate is dissolved, the President shall not vacate his office until immediately before the first meeting of the Senate after the dissolution. 15

(3) 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 Senate as the Governor may appoint for the purpose, and during any absence 20 of the President from any sitting of the Senate the Deputy-President or, if he is also absent, such person as may be determined by the rules of procedure of the Senate, or, if no such person is present, such other person as may be determined by the Senate, shall act as President. 25

(4) There shall be paid to the President and the Deputy-President of the Senate such salaries as may be respectively fixed by Act of the Legislature, and until provision in that behalf is so made such salaries as the Governor may determine. 30

(5) The foregoing provisions of this section shall apply in relation to the House of Representatives as they apply in relation to the Senate with the substitution of the titles "Speaker" and "Deputy-Speaker" for the titles "President" and "Deputy-President" respectively, 35 and with the substitution of references to the House of Representatives for references to the Senate.

Voting in
Chambers,
power of
Chambers to
act notwith-
standing.

318.—(1) 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 40 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. A.D. 1935.
PART XIV.
—cont.

(2) A Chamber of the 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. vacancies
and quorum.

(3) If at any time during a meeting of the Senate less than twelve members are present, or if at any time during a meeting of the House of Representatives less than one-sixth of the total number of members thereof 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 twelve members, or, as the case may be, at least one-sixth of the members, are present.

Provisions as to members of Legislature.

319. Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor or some person appointed by him, an oath according to the form set out in the Thirteenth Schedule to this Act. Oath or
affirmation
of members.

320.—(1) No person shall be a member of both Chambers and rules made by the Governor 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. Vacation of
seats.

(2) If a member of either Chamber—

- (a) ceases to possess any of the qualifications which he was under the provisions of the Twelfth Schedule to this Act required to possess when he was chosen a member; or
- (b) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or
- (c) by writing under his hand addressed to the Governor resigns his seat,

his seat shall thereupon become vacant.

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PART XIV.
—cont.

(3) 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.

Disqualifi-
cations for
member-
ship.

321.—(1) 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 Burma other than an office declared by Act of the 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 commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of an offence relating to elections which has been declared by Order in Council, or by an Act of the Legislature, to be an offence conviction whereof is a disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act;
- (e) if he has, whether before or after the commencement of this Part of this Act, been convicted in Burma or has, before the commencement of this Part of this Act, been convicted in British India, of any other offence, and has, in either case, been sentenced to transportation or to imprisonment for a period exceeding twelve months, unless a period of five years, or such less period as the Governor may in his discretion allow in any particular case, has elapsed since his release.

(2) 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 A.D. 1935.
criminal offence.

PART XIV.
—cont.

(3) 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 (1) of this section is at the date of the disqualification a member of a Chamber, 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.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in Burma by reason only that he is a minister.

322. If a person sits or votes as a 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 Government of Burma.

Penalty for sitting and voting when not qualified or disqualified.

323.—(1) Subject to the provisions of this Part of this Act and to the rules and standing orders regulating the procedure of the 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 a Chamber of the Legislature of any report, paper, votes or proceedings.

Privileges, &c. of members.

(2) In other respects, the privileges of members of the Chambers of the Legislature shall be such as may from time to time be defined by Act of the Legislature and until so defined shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of Burma.

A.D. 1935.

PART XIV.
—cont.

(3) Notwithstanding anything in the foregoing provisions of this section, nothing in this Part of this Act shall be construed as conferring, or empowering the Legislature to confer, on either Chamber thereof or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any power to compel the attendance of any person for any purpose before either Chamber or before both Chambers sitting together or before any committee or officer of the Legislature, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

For the purposes of this subsection an enactment of the Legislature providing for the punishment of persons who refuse to attend as aforesaid shall be deemed to be an enactment conferring power to compel the attendance of persons.

(4) 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.

Salaries
and allow-
ances of
members.

324. 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 Legislature, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of Burma.

Procedure Generally.

Rules of
procedure.

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

Provided that as regards each Chamber the Governor 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 ^{A.D. 1935.} functions in so far as he is by or under this ^{PART XIV.} Act required to act in his discretion or to exercise ^{—cont.} his individual judgment;

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

(c) for prohibiting, save with the consent of the Governor in his discretion—

10 (i) the discussion of, or the asking of questions on, any matter affecting relations between His Majesty or the Governor and any foreign State or Prince; or

15 (ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters arising out of or affecting the administration of any of the areas specified in the Eleventh Schedule to this Act;

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

(2) The Governor, after consultation with the President of the Senate and the Speaker of the House of Representatives, may make rules as to the procedure with
25 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 in his discretion may think fit.

30 (3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of Burma shall have effect in relation to the Legislature, subject to such
35 modifications and adaptations as may be made therein by the Governor in his discretion.

(4) At a joint sitting of the two Chambers the President of the Senate, or in his absence such person as may be determined by rules of procedure made under this
40 section, shall preside.

A.D. 1935.

PART XIV.

—cont.
English to
be used in
Legisla-
ture.

326. All proceedings in the Legislature shall be conducted in the English language :

Provided that the rules of procedure of the Chambers, 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. 5

Restrictions
on discus-
sion.

327.—(1) No discussion shall take place in the Legislature with respect to the conduct of any judge of the High Court in the performance of his judicial functions. 10

(2) If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the 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 Burma 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. 15 20

Courts not
to inquire
into pro-
ceedings of
the Legis-
lature.

328.—(1) The validity of any proceedings in the Legislature shall not be called in question on the ground of any alleged irregularity of procedure. 25

(2) No officer or other member of the Legislature in whom powers are vested by or under this Part of 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. 30

CHAPTER IV.

LEGISLATION.

*Powers of the Legislature as to Legislation.*Extent of
laws of
Legislature.

329. Subject to the provisions of this Part of this Act— 35

(1) The Legislature may make laws for the territories in Burma belonging to His Majesty or any part thereof.

(2) Without prejudice to the provisions of the ^{A.D. 1935.} preceding paragraph, an Act of the Legislature ^{PART XIV.} shall, unless it is otherwise expressly provided ^{—cont.} therein, extend—

5 (a) to all subjects of His Majesty within any part of Burma; and

 (b) in the case of a law for the regulation or discipline of any naval, military or air force raised in Burma, to all members of, and
10 all persons attached to, employed with or following that force, wherever they may be, in so far as they are not subject to the Army Act the Air Force Act, the Naval Discipline Act or any similar law enacted by a competent
15 authority in India,

and may extend to any Burman subjects of His Majesty, wherever they may be.

330. Nothing in this Part of this Act shall be Savings. taken—

20 (a) to affect the power of Parliament to legislate for Burma; or

 (b) to empower the Legislature—

 (i) to make any law affecting the Sovereign, or the Royal Family, or the sovereignty,
25 dominion or suzerainty of the Crown in any part of Burma, or the law of British nationality, or the Army Act, the Air Force Act, the Naval Discipline Act, or any similar law enacted by a competent authority in
30 India, or the law of Prize or Prize Courts; or

 (ii) except in so far as expressly permitted by this Part of this Act, to make any law amending any provisions of this Part of this Act, or any Order in Council made there-
35 under, or any rules made under this Part of this Act by the Secretary of State, or by the Governor in his discretion or in the exercise of his individual judgment.

Legislative procedure.

40 **331.**—(1) Subject to the provisions of chapter VI of this Part of this Act with respect to financial Bills, a ^{Intro-} Bill may originate in either Chamber of the Legislature. ^{duction of Bills, &c.}

A.D. 1935.

PART XIV.
—cont.

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

(3) A Bill pending in one Chamber which has not been passed by the other Chamber shall not lapse on a dissolution of that other Chamber, but save as aforesaid all Bills shall lapse on a dissolution of either Chamber. 5

Previous
sanction of
Governor
required
for certain
legislative
proposals.

332.—(1) Unless the Governor in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Legislature, any Bill or any amendment which— 10

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

(b) repeals, amends or is repugnant to any Governor's Act or any ordinance promulgated in his discretion by the Governor; or 15

(c) affects matters reserved to the discretion of the Governor in relation to defence, external affairs, areas in Burma which are not part of the territories of His Majesty, areas specified in Part I of the Eleventh Schedule to this Act, ecclesiastical affairs, monetary policy, currency or coinage; or 20

(d) repeals, amends or affects any Act relating to any police force; or 25

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

(f) affects immigration into Burma. 30

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

Passing
of Bills.

333.—(1) Subject to the provisions of this 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 amendments or with such amendments only as are agreed to by both Chambers. 35 40

(2) If a Bill which has been passed by one Chamber and transmitted to the other is not before the expiration

of twelve months from its reception by that other Chamber presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

A.D. 1935.
PART XIV
—cont.

Provided that if it appears to the Governor 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 in his discretion summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section 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 purposes of this Act to have been passed by both Chambers :

Provided that at a joint sitting—

(a) unless the Bill, having been passed by one Chamber, has 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 and 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.

334.—(1) When a Bill has been passed by the Chambers it shall be presented to the Governor and the Governor shall in his discretion declare either that he

Assent to
Bills, and
disallow-
ance of

A.D. 1935.

PART XIV.
—cont.

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 :

Bills by His Majesty.

Provided that the Governor may in his discretion return the Bill to the Chambers with a message requesting 5 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. 10.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His 15 Majesty has assented thereto.

(3) Any Act assented to by the Governor may be disallowed by His Majesty within twelve months from the date of the Governor's assent, and where any Act is so disallowed the Governor shall forthwith 20 make the disallowance known by public notification and as from the date of the notification the Act shall become void.

Require-
ments as to
sanctions
and recom-
mendations
to be re-
garded as
matters of
procedure
only.

335.—(1) Where under any provision of this Part of this Act the previous sanction or recommendation of 25 the 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 30 this Part of this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some previous sanction or recommendation was not given. 35

Legislative powers of Governor.

Legislation
for areas
mentioned
in Eleventh
Schedule.

336.—(1) Notwithstanding anything in this chapter no Act of the Legislature shall apply to any area specified in the Eleventh Schedule to this Act unless the Governor by public notification so directs, and the Gover- 40 nor in giving such a direction with respect to any Act may

direct that the Act shall, in its application to the area ^{A.D. 1935.}
or to any specified part thereof, have effect subject to ^{PART XIV.}
such exceptions or modifications as he thinks fit. ^{—cont.}

5 (2) The Governor may make regulations for the peace
and good government of any such area, and any regula-
tions so made may repeal or amend any Act, whether
passed before or after the commencement of this Part of
this Act, which is for the time being applicable to the
area.

10 (3) The provisions of this Part of this Act with
respect to the power of His Majesty to disallow Acts shall
apply in relation to any such regulations as they apply
in relation to Acts of the Legislature.

15 **337.**—(1) If at any time when the Legislature
is not in session the Governor is satisfied that circum-
stances exist which render it necessary for him to take
immediate action, he may promulgate such ordinances as
the circumstances appear to him to require : <sup>Power of
Governor to
promulgate
ordinances
during
recess of
Legislature.</sup>

Provided that the Governor—

20 (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
25 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 signifi-
30 cation of His Majesty's pleasure.

(2) An ordinance promulgated under this section
shall have the same force and effect as an Act of the
Legislature, but every such ordinance—

35 (a) shall be laid before the Legislature and shall
cease to operate at the expiration of six weeks
from the reassembly of the Legislature, or, if a
resolution disapproving it is passed by the
House of Representatives and agreed to by the
Senate, upon the resolution being agreed to by
40 the Senate;

A.D. 1935.

PART XIV.
—cont.

(b) shall be subject to the provisions of this Part of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Legislature; and

(c) may be withdrawn at any time by the Governor. 5

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Legislature, it shall be void.

Power of Governor to promulgate ordinances at any time with respect to certain subjects.

338.—(1) If at any time the Governor is satisfied that circumstances exist which render it necessary for 10 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 15 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 20 not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Legislature, but every such ordinance—

(a) shall be subject to the provisions of this Act 25 relating to the powers of His Majesty to disallow Acts as if it were an Act of the Legislature;

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

(c) if it is an ordinance extending a previous ordin- 30 ance for a 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 would not be valid if enacted 35 in an Act of the Legislature it shall be void.

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

339.—(1) If at any time it appears to the Governor 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 shall attach to any such message a draft of the Bill which he considers necessary.

A.D. 1935.

PART XIV.
—cont.Power of
Governor
to enact
Acts.

(2) At any time after the expiration of one month the Governor may enact, as a Governor's Act, the Bill proposed by him to the Chambers 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's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Legislature, and if and so far as it makes any provision which would not be valid if enacted in an Act of the Legislature it shall be void.

(4) Every Governor'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 under this section shall be exercised by him in his discretion.

CHAPTER V.

RESTRICTIONS ON DISCRIMINATION, &c.

340.—(1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any law of Burma as imposes any restriction on the right of entry into Burma :

Provided that no person shall by virtue of this subsection be entitled to claim exemption from any such restriction if and so long as Burman subjects of His

Certain
Burman
laws not to
bind British
subjects
domiciled
in the
United
Kingdom
and British
India.

A.D. 1935.

PART XIV.
—cont.

Majesty domiciled in Burma are by or under the law of the United Kingdom subject in the United Kingdom to a similar restriction.

For the purposes of this subsection a provision whether of the law of Burma or of the law of the United Kingdom empowering any public authority to impose quarantine regulations, or to exclude or deport individuals wherever domiciled who appear to that authority to be undesirable persons, shall be deemed not to be a restriction on the right of entry.

(2) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any law of Burma as imposes by reference to place of birth, race, descent, language, religion, domicile, residence, or duration of residence, any liability, restriction or condition in regard to travel, residence, the holding of property or public office, or the carrying on of any occupation, trade, business or profession :

Provided that no person shall by virtue of this subsection be entitled to claim exemption from any such restriction, condition or liability as aforesaid if and so long as Burman subjects of His Majesty domiciled in Burma are by or under the law of the United Kingdom subject in the United Kingdom to a similar liability, restriction or condition imposed in regard to the same subject matter by reference to the same principle of distinction.

(3) The provisions of subsection (2) of this section shall apply in relation to Indian subjects of His Majesty domiciled in British India as they apply in relation to British subjects domiciled in the United Kingdom with the substitution for references to the United Kingdom of references to British India :

Provided that nothing in this subsection shall affect any restriction lawfully imposed on the right of entry into Burma or such Indian subjects of His Majesty as aforesaid or any restriction lawfully imposed as a condition of allowing any such Indian subject to enter Burma.

(4) Notwithstanding anything in this section, if the Governor by public notification certifies that for the

prevention of any grave menace to the peace or tranquillity of any part of Burma, or for the purposes of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor under this subsection shall be exercised by him in his discretion.

341. No law of the Legislature which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Indian subjects of His Majesty domiciled in British India, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

342.—(1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the shareholders, officers, agents and servants thereof, shall be deemed to comply with so much of any law of Burma as imposes in regard to companies trading in Burma requirements or conditions relating to or connected with—

- (a) the place of incorporation of a company; or
- (b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of its shareholders, officers, agents or servants :

Provided that no company or person shall by virtue of this subsection be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of Burma and trading in the United Kingdom.

(2) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much

A.D. 1935.

PART XIV.

—cont.

of any law of Burma as imposes in regard to companies incorporated, whether before or after the passing of this Act, by or under the laws of Burma, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence 5 or duration of residence of members of the governing body of a company or of its shareholders, officers, agents or servants :

Provided that no person shall by virtue of this section be deemed to comply with any such requirement 10 or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of the United Kingdom on Burman subjects of His Majesty domiciled in Burma. 15

(3) The foregoing provisions of this section shall apply in relation to Indian subjects of His Majesty domiciled in British India and companies incorporated by or under the laws of British India as they apply in relation to British subjects domiciled in the United Kingdom and 20 companies incorporated by or under the laws of the United Kingdom, with the substitution for references to the United Kingdom of references to British India.

Reciprocal
treatment
of ships.

343.—(1) No ship registered in the United Kingdom shall be subjected directly or indirectly by or under any 25 law of Burma to any treatment affecting either the ship herself, or her master, officers, crew, passengers, or cargo, which is discriminatory in favour of ships registered in Burma except in so far as ships registered in Burma are for the time being subjected by or under any law of the United 30 Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) The provisions of this section shall apply in relation to ships registered in British India as they apply 35 in relation to ships registered in the United Kingdom with the substitution for references to the United Kingdom of references to British India.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the 40 preceding sections of this chapter.

344.—(1) Notwithstanding anything in any Act of A.D. 1935. the Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in Burma, shall be eligible for any grant, bounty or subsidy payable out of public moneys in Burma for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of Burma are eligible therefor : PART XIV.
—cont.
Subsidies for the encouragement of trade or industry.

10 Provided that this subsection shall not apply in relation to any grant, bounty or subsidy payable out of public money for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incor-
15 porated by or under the laws of Burma and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the
20 United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Legislature may require, in the case of a company which at the date of the passing of that Act was not
25 engaged in Burma in that branch of trade or industry which it is the purpose of the Act to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless—

30 (a) the company is incorporated by or under the laws of Burma ; and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are Burman subjects of His Majesty ; and

35 (c) the company gives such reasonable facilities for the training of Burman subjects of His Majesty as may be so prescribed.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom
40 shall be deemed to be carrying on business in Burma if it owns ships which habitually trade to and from ports in Burma.

A.D. 1935.

PART XIV.
—cont.

(4) The foregoing provisions of this section shall apply in relation to companies incorporated by or under the laws of British India as they apply in relation to companies incorporated by or under the laws of the United Kingdom with the substitution for references to the United Kingdom of references to British India.

Power to
secure
reciprocal
treatment
by con-
vention.

345.—(1) If a convention is made between His Majesty's Government in the United Kingdom and the Government of Burma, whereby similarity of treatment is assured, in the United Kingdom to Burman subjects of His Majesty domiciled in Burma and to companies incorporated by or under the laws of Burma, and in Burma to subjects of His Majesty domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in Burma for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) As from the establishment of the Federation of India, the provisions of subsection (1) of this section shall apply in relation to Indian subjects of His Majesty domiciled in British India and to companies incorporated by or under the laws of British India as they apply in relation to subjects of His Majesty domiciled in the United Kingdom, and companies incorporated by or under the laws of the United Kingdom, with the substitution for references to His Majesty's Government in the United Kingdom, and the United Kingdom, of references to the Federal Government and British India.

(3) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

346. No law of Burma which prescribes or empowers any authority to prescribe the qualifications to be held by persons—

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PART XIV.
—cont.Professional
qualifica-
tions in
general.

- (a) practising any profession in Burma ; or
5 (b) holding any office or performing any functions in Burma,

shall have effect so as to preclude any person who immediately before the passing of this Act was lawfully practising any profession in Burma from continuing
10 to practise that profession, or from being appointed to or holding any office or performing any functions, if at the said date he was qualified to be appointed to, or to hold or perform, that office or those functions, or offices or functions of a comparable or analogous nature.

347.—(1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or Burma who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be,
20 registered in the United Kingdom as a qualified medical practitioner shall not by or under any law of Burma, be excluded from practising medicine, surgery or midwifery in Burma, or from being registered as qualified so to do, on any ground other than the ground
25 that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless the law of Burma makes provision for securing—

Medical
qualifica-
tions.

- (a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor and to the University or other body granting that diploma ; and
30

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.
40

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PART XIV.
—cont.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in Burma, that body or person 5 may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in Burma and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine 10 whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor, who shall communicate it to such author- 15 ities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in subsection (1) of this section is that Burman subjects of His Majesty holding a medical diploma granted after examination in 20 Burma shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as a qualified medical practitioner, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite know- 25 ledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy 30 Council.

(4) A medical practitioner entitled to practise or be registered in Burma by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in Burma, shall not in the practice 35 of his profession be subjected to any restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply 40 in relation to Indian subjects of His Majesty who, by virtue of medical diplomas granted to them in India or the United Kingdom, are, or are entitled to be,

- registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are or are entitled to be, registered in the United Kingdom as qualified medical practitioners.

The said modifications are as follows, that is to say,—

- (a) subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted ;

- (b) any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to India.

- (6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or Burma to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

- (7) In this section the expression “ diploma ” includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

- 348.** A person who holds a commission from His Majesty as a medical officer in any branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in Burma and be entitled to be registered in Burma as so qualified.

- 349.**—(1) Nothing in the preceding sections of this chapter shall affect the operation of any law passed or made before this Act, other than a law relating to medical practitioners.

- (2) In this chapter, “ law ” includes any ordinance, order, byelaw, rule or regulation having, by virtue of any Act of Parliament, or of any existing Indian or Burman law, or of any law of the Federal or any Provincial Legislature or of the Legislature of Burma, the force of law.

- (3) In this chapter—

- (a) references to companies incorporated by or under the laws of Burma include references to

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PART XIV.
—cont.

companies incorporated by or under the laws of British India and registered in Burma, but do not include references to companies so incorporated which were registered elsewhere ;

5

- (b) references to companies incorporated by or under the laws of British India do not include references to companies registered in Burma.

CHAPTER VI.

FINANCE.

10

General.

Meaning of
revenues of
Burma.

350. Subject to the provisions of this chapter with respect to the Federated Shan States and to the provisions of this Part of this Act with respect to the Burma Railway Board, the expression "revenues of Burma" includes all revenues and public moneys raised or received by the Government of Burma.

15

Expendi-
ture defray-
able out of
revenues of
Burma.

351. No burden shall be imposed on the revenues of Burma except for the purposes of the government of Burma.

20

Duty of the
Government
of Burma to
keep Secre-
tary of State
supplied
with funds.

352. The Government of Burma shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of Burma.

25

Proceedings in the Legislature.

Annual
financial
statement.

353.—(1) The Governor shall in respect of every financial year cause to be laid before both Chambers of the Legislature a statement of the estimated receipts and expenditure of the Government of Burma for that year, in this chapter referred to as the "annual financial statement."

30

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

35

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

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

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PART XIV.
—cont.

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor 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 Burma :—

- (a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ;
- 15 (b) debt charges for which the Government of Burma^a 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 ;
- 20 (c) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General, of the personal and secretarial staffs of the Governor and of the staff of the financial adviser ;
- 25 (d) the salaries, allowances, and pensions payable to and in respect of judges of the High Court ;
- 30 (e) expenditure for the purpose of the discharge by the Governor of his functions with respect to defence, ecclesiastical affairs, monetary policy, currency and coinage, 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 areas in Burma which are not part of the territories of His Majesty and his functions in relation to the administration of any area specified in Part I of the Eleventh Schedule to this Act : provided that the sum so charged in any year
- 35 in respect of expenditure on ecclesiastical affairs shall not exceed two hundred and eighty-four thousand rupees, exclusive of pension charges ;
- 40

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PART XIV.
—cont.

- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;
- (g) any other expenditure declared by this Part of this Act or any Act of the Legislature to be so charged. 5

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of Burma shall be decided by the Governor in his discretion. 10

Procedure
in Legis-
lature with
respect to
estimates.

354.—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of Burma shall not be submitted to the vote of the House of Representatives, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of those estimates, other than estimates relating to expenditure referred to in sub-paragraph (a) of subsection (3) of the last preceding section. 15

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the House of Representatives, and the House of Representatives shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein. 20 25

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

Authenti-
cation of
schedule of
authorised
expendi-
ture.

355. The Governor shall authenticate by his signature a schedule specifying—

- (a) the grants made by the House of Representatives under the last preceding section ; 30
- (b) the several sums required to meet the expenditure charged on the revenues of Burma but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chambers : 35

Provided that if the House of Representatives have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his 40

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 the House of Representatives but shall not be open to discussion or vote in the Legislature.

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

356. If in respect of any financial year further expenditure from the revenues of Burma becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before both Chambers of the 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.

357.—(1) A Bill or amendment making provision—

(a) for imposing or increasing any tax or impost, whether local or general ; or

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

(c) for declaring any expenditure to be expenditure charged on the revenues of Burma, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in the Senate.

(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

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PART XIV.

—cont.

Supplementary statement of expenditure.

Special provisions as to financial Bills.

A.D. 1935. or other pecuniary penalties, or for the demand and
 PART XIV. payment of fees for licences, or fees for services
 --cont. rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of Burma shall not be passed by either Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill. 5

Borrowing.

Borrowing
 powers and
 existing
 loans.

358.—(1) The executive authority of Burma extends to borrowing upon the security of the revenues of Burma within such limits as may from time to time be fixed by Act of the Legislature and to the giving of guarantees within such limits as may be so fixed. 10

(2) Any obligations of the Local Government of Burma which, immediately before the commencement of this Part of this Act, were secured upon its revenues, shall after the said date be secured upon the revenues of Burma. 15

Application
 of Colonial
 Stock Acts
 to stocks
 issued by
 Govern-
 ment of
 Burma.

359.—(1) The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the commencement of this Part of this Act and forming part of the public debt of Burma as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so, however, that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900 shall be deemed to have been complied with with respect to all such stock so issued by the Government of Burma. 20 25 30 35

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.

Audit and Accounts.

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PART XIV.
—cont.Auditor-
General of
Burma.

360.—(1) There shall be an Auditor-General of Burma who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the High Court.

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in Burma after he has ceased to hold his office :

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of Burma as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Legislature varying or extending such an Order :

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of Burma.

361.—(1) The accounts of the Government of Burma shall be kept in such form as the Auditor-General of Burma may, with the approval of the Governor, prescribe.

(2) The reports of the Auditor-General relating to the accounts of the Government of Burma shall be submitted to the Governor who shall cause them to be laid before the Legislature.

(3) If His Majesty in Council makes provision requiring the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation to India—

(a) any payments required by the Order to be made in respect of his services from the revenues of Burma shall be so made and shall be charged on those revenues ;

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PART XIV.
—cont.

- (b) any reports submitted by the Auditor of Indian Home Accounts to the Auditor-General of Burma shall be included by the Auditor-General in the reports which under this chapter he is required to submit to the Governor or to the Secretary of State. 5

Federated Shan States.

Provisions
as to the
Federated
Shan States.

362.—(1) Until His Majesty in Council makes other provision, there shall continue to be a Federal Fund of the Federated Shan States under the control of the Governor in his discretion. 10

(2) His Majesty may by Order in Council—

- (a) require contributions to be made to the said Fund out of the revenues of, or accruing in, the States comprised within the Federated Shan States; 15
- (b) require payments (representing the share of the annual receipts of the Government of Burma on revenue account properly allocable to the said States) to be made from time to time out of the revenues of Burma to the said Fund; 20
- (c) require payments (representing the share of the annual general expenses of the Government of Burma properly allocable to the said States) to be made from time to time out of the said Fund to the revenues of Burma; and 25
- (d) make such other provision as he thinks fit with respect to the manner in which the said Fund is to be dealt with. 30

(3) Any sums required under this section to be paid out of the revenues of Burma shall be charged on those revenues.

(4) Such accounts shall be kept in respect of the receipts and expenditure of the said Fund as the Auditor-General of Burma may, with the approval of the Governor in his discretion, prescribe, and the said accounts shall be audited by, or on behalf of, the Auditor-General of Burma who shall make annual reports thereon to the Secretary of State. 35 40

CHAPTER VII.

THE BURMA RAILWAY BOARD.

A.D. 1935.

PART XIV.
—cont.Executive
authority in
respect of
railways to
be exercised
by Railway
Board.

5 **363.** The executive authority of Burma in respect of the construction, maintenance and operation of railways in Burma shall be exercised by a Railway Board (hereinafter referred to as "the Board").

364.—(1) The Board shall consist of a President and eight other members.

Composition
&c., of
Board.

10 (2) The person who is for the time being the chief executive officer of the Board (who shall be called the chief railway commissioner) shall be President of the Board.

The said chief railway commissioner shall be a person with experience of railway administration, and shall be
15 appointed, and may at any time be removed from office, by the Governor in his discretion.

(3) Of the eight other members of the Board two shall be—

20 (a) a financial member, being a person with special experience of finance, who shall be appointed, and may at any time be removed from office, by the Governor exercising his individual judgment ;

25 (b) the person who is for the time being the secretary to the Government of Burma in the department which for the time being deals with the subject of railways.

The six other members of the Board are in this Part of this Act called the non-official members.

30 (4) Subject as aforesaid, the provisions of the Fourteenth Schedule to this Act, as supplemented or amended by any Act of the Legislature, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Board,
35 and with respect to its proceedings and its liability to income-tax :

40 Provided that no Bill or amendment for supplementing or amending the said Schedule shall be introduced or moved in either Chamber of the Legislature without the previous sanction of the Governor in his discretion.

A.D. 1935.

PART XIV.
—cont.Directions
and prin-
ciples to be
observed
by Railway
Board.

365.—(1) The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of its receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this chapter. 5

(2) In the discharge of its said functions the Board shall be guided by such instructions on questions of policy as may be given to it by the Government. 10

(3) The provisions of subsection (1) of this section shall apply in relation to the discharge by the Government of their functions with respect to railways as they apply in relation to the functions of the Board, but nothing in this subsection shall be construed as limiting the powers of the Governor under the next succeeding subsection. 15

(4) The provisions of this Part of this Act relating to the special responsibilities of the Governor 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 Board as if the executive authority of Burma in regard to those matters were vested in him, and as if the functions of the Board as regards those matters were the functions of ministers, and the Governor may issue to the Board 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 Board shall give effect to any directions so issued to it. 20 25 30

Conduct of
business
between
Board and
Govern-
ment.

366.—(1) The Governor exercising his individual judgment, but after consultation with the Board, may make rules for the more convenient transaction of business arising out of the relations between the Government and the Board. 35

(2) The rules shall include provisions requiring the Board to transmit to the Government all such information with respect to its business as may be specified in the rules, or as the Governor may otherwise require to 40

be so transmitted and, in particular, provisions requiring the Board to bring to the notice of the Governor any matter under consideration by the Board which involves, or appears to it likely to involve, any special responsibility of the Governor.

A.D. 1935.
PART XIV.
—cont.

367.—(1) Except in such classes of case as may be specified in regulations to be made by the Government, the Board shall not acquire or dispose of any land and, when it is necessary for the Board to acquire compulsorily any land for the purposes of its functions the Government shall acquire that land on its behalf and at its expense.

Acquisition and sale of land by, and contracts and liabilities of, the Board.

(2) Contracts made by or on behalf of the Board shall be enforceable against the Board and not against the Government, and, subject to any provision which may hereafter be made by the Legislature, the Board may sue and be sued in the like manner and in the like cases as a company operating a railway might 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 commencement of this Part of this Act and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

368.—(1) The Board shall establish, maintain and control a fund (which shall be known as the " Railway Fund ") and all moneys received by the Board, whether on revenue account or on capital account, in the discharge of its functions and all moneys provided, whether on revenue account or capital account, out of the revenues of Burma to enable it to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of its functions shall be defrayed out of that Fund :

Finance of the Railway Board.

Provided that nothing in this subsection shall prevent the Board from establishing and maintaining a separate provident fund for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the Board on revenue account in any financial year shall be applied in—

(a) defraying working expenses ;

A.D. 1935.

PART XIV.

—cont.

- (b) paying pensions, and interest and bonuses on, and contributions to, any provident fund ;
- (c) making due provision for maintenance, renewals, improvements and depreciation ;
- (d) making to the revenues of Burma any payments 5 by way of interest which it is required by this chapter to make ; and
- (e) defraying other expenses properly chargeable against revenue in that year.

(3) Any surpluses on revenue account shown in the 10 accounts of the Board shall be apportioned between the Government and the Board in accordance with a scheme to be agreed between the Government and the Board, or in default of agreement, determined by the Governor exercising his individual judgment, and any sum appor- 15 tioned to the Government under this subsection shall be transferred accordingly and shall form part of the revenues of Burma.

(4) The Government may provide any moneys, whether on revenue account or capital account, for the 20 purposes of the Board, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature. 25

(5) The Board shall, on such conditions as may be agreed, entrust all its money which is not immediately needed to the bank to which the balances of the Govern- ment of Burma are entrusted, and employ that bank as its agents for all transactions in Burma relating to 30 remittances, exchange and banking.

Provisions
as to certain
obligations
of the Rail-
way Board.

369.—(1) There shall be deemed to be owing from the Board to the Government of Burma such sum as may be agreed between the Government of Burma and the Board, or, in default of agreement, determined by the Governor in 35 his discretion, to be equivalent to the amount of the moneys provided out of the revenues of Burma, or, before the commencement of this Part of this Act, out of the revenues of India, for capital purposes in connection with railways in Burma, and the Board shall out of its receipts on 40 revenue account pay to the Government interest on that amount at such rate as may be so agreed or deter-

mined, and also make payments in reduction of the principal of that amount in accordance with any repayment scheme so agreed or determined. A.D. 1935.
PART XIV.
—cont.]

(2) It shall be an obligation of the Board to pay to the Government such sum as may be agreed, or, in default of agreement, determined by the Governor exercising his individual judgment to be the equivalent of the expenses incurred by the Government in the provision of police required for the maintenance of order on railway premises.

10 **370.** Subject to such conditions, if any, as may be prescribed by the Government, the Board may from time to time invest any moneys in the railway fund or a provident fund which are not for the time being required to meet expenses properly defrayable out of that fund and may, subject as aforesaid, from time to time transfer and realise investments so made by it. Investment
of funds.

371.—(1) There shall be deemed to be owing by the Government of Burma to the Board such sum as may be declared by His Majesty in Council to represent the amount of the existing railway funds attributable to the railways in Burma, but no sum shall be paid by the Government of Burma to the Board in respect of the money so deemed to be owing except in respect of expenses of the Board which could if this Act had not been passed have properly been met out of the said funds respectively. Special provisions as to
certain
funds.

(2) There shall be paid out of the revenues of Burma to the Board in respect of the amount from time to time deemed to be owing under this subsection interest at such rate as may from time to time be agreed between the Government and the Board or as may, in default of agreement, be from time to time determined by the Governor in his discretion.

(3) In this section “the existing railway funds” means the funds known respectively as the railway provident funds, the railway reserve funds and the railway depreciation funds which immediately before the commencement of this Part of this Act were held by, or were shown in the accounts of the Government of India as held by, the Governor-General in Council.

40 **372.**—(1) The accounts of the receipts and expenditure of the Board shall be audited and certified by, or on behalf of, the Auditor-General. Audit and
annual
reports.

A.D. 1935.

PART XIV.
—cont.Railway
Rates
Committee.

(2) The Board shall publish annually a report of its operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

373. The Governor may from time to time appoint a Railway Rates Committee to advise the Board in connection with any dispute between persons using or desiring to use the railways and the Board as to rates or traffic facilities which he may require the Board to refer to the Committee.

Bills and
amendments
for regulating
rates and
fares to
require
recom-
mendation
of Governor.

374. A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Legislature except on the recommendation of the Governor.

CHAPTER VIII.

15

THE HIGH COURT.

Constitu-
tion of
High Court.

375.—(1) The High Court at Rangoon (in this Part of this Act called the High Court) shall continue, and shall be a court of record, and shall consist of a chief justice and such number of other judges as His Majesty may deem it necessary to appoint : 20

Provided that the judges so appointed, together with any additional judges appointed by the Governor in accordance with the following provisions of this chapter, shall at no time exceed in number such maximum number as His Majesty in Council may fix. 25

(2) Every judge of the High 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 years : 30

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor 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. 40

(3) A person shall not be qualified for appointment as a judge of the High Court unless he—

A.D. 1935.

PART XIV.

—cont.

- 5 (a) 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
- 10 (b) is a member of the Indian Civil Service or the Burma Civil Service (Class I) of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or
- 15 (c) has for at least five years held judicial office in Burma not inferior to that of a district judge or judge of the small cause court of Rangoon; or
- (d) has for at least ten years been a pleader of the High Court.

20 In computing for the purpose of this subsection 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 he 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.

25 (4) Every person appointed to be a judge of the High Court shall before he enters upon his office make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Thirteenth Schedule to this Act.

30 **376.** The judges of the High 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 of absence and pensions as may from time to time be fixed by His Majesty in Council: Salaries, &c. of judges.

35 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.

40 **377.—(1)** If the office of chief justice of the High Court 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, Temporary and additional appointments.

A.D. 1935.

PART XIV.

—cont.

until some person appointed by His Majesty to the vacant office has entered on the duties thereof, 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 may in his discretion think fit to appoint for the purpose. 5

(2) If the office of any other judge of the High Court becomes vacant, or if any such judge is appointed to act temporarily as chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of the court, and the person so appointed shall, unless the Governor in his discretion, thinks fit to revoke his appointment, be deemed to be a judge of the court until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties. 10 15

(3) If by reason of any temporary increase in the business of the High Court or by reason of arrears of work in that Court it appears to the Governor that the number of the judges of the Court should be for the time being increased, the Governor in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the Court for such period not exceeding two years as he may specify. 20 25

Jurisdiction
of High
Court.

378. Subject to the provisions of this Part of this Act and to the provisions of any Act of the Legislature, the jurisdiction of and the law administered in the High Court and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Part of this Act : 30 35

Provided that the High Court shall not have any greater powers of superintendence over any subordinate courts than are together conferred by the letters patent with respect to the High Court in force immediately 40

before the commencement of this Part of this Act, any A.D. 1935.
existing Indian or Burman law, any Act of the Legislature, PART XIV.
and the next succeeding section. —cont.

379. The High Court has administrative superin- Adminis-
5 tendence over all courts for the time being subject to its trative
appellate jurisdiction, and may do any of the following functions of
things, that is to say,— High
Court.

- (a) call for returns ;
- 10 (b) make and issue general rules and prescribe
forms for regulating the practice and proceedings
of such courts;
- (c) prescribe forms in which books, entries and
accounts shall be kept by the officers of any
such courts ; and
- 15 (d) settle tables of fees to be allowed to the sheriff,
attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall
not be inconsistent with the provisions of any law for
the time being in force, and shall require the previous
20 approval of the Governor.

380.—(1) Until otherwise provided by Act of the Jurisdiction
Legislature, the High Court shall not have any original in revenue
jurisdiction in any matter, concerning the revenue or matters.
25 thereof according to the usage or practice of the country
or the law for the time being in force.

(2) A Bill or amendment for making such provision
as aforesaid shall not be introduced or moved in either
Chamber of the Legislature without the previous sanction
30 of the Governor in his discretion.

381.—(1) In addition to any other right of appeal Additional
there shall, subject to the provisions of section twenty appeal to
of the Judicial Committee Act, 1833 (which relates to the His Majesty
time for appealing) be a right of appeal to His Majesty as respects
35 in Council from any decision of the High Court on the interpretation of this
ground that a question of law with respect to the Act.
interpretation of this Part of this Act or any Order in
Council made thereunder has been wrongly decided.

A.D. 1935.

PART XIV.
—cont.Proceedings
in High
Court to be
in English.
Expenses.

(2) Nothing in this Part of this Act shall be construed as authorising the Legislature to derogate from any prerogative right of His Majesty to grant special leave to appeal in any criminal case.

382. All proceedings in the High Court shall be in the English language. 5

383.—(1) The administrative expenses of the High Court, including all salaries, allowances and pensions payable to or in respect of judges, officers and servants of the Court, shall be charged upon the revenues of Burma, and any fees or other moneys taken by the Court shall form part of those revenues. 10

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature. 15

(3) Nothing in this Part of this Act shall render a pension payable to, or in respect of, a judge of the High Court who retired before the commencement of this Part of this Act chargeable upon the revenues of Burma. 20

Saving.

384. Any judge appointed before the commencement of this Part of this Act to the High Court shall continue in office and shall be deemed to have been appointed under this chapter, but shall not by virtue of this Act be required to relinquish his office at an earlier age than he would have been required so to do if this Act had not been passed. 25

CHAPTER IX.

THE SERVICES OF THE CROWN IN BURMA.

30

*Defence Services.*Control of
His Majesty
as to defence
appoint-
ments.

385.—(1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct. 35

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.

386. The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air forces raised in Burma extends to the granting of a commission in any
 5 such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

A.D. 1935.

PART XIV.

—cont.

Eligibility for commissions in Burman forces.

387. Without prejudice to the generality of the powers conferred on him by this Part of this Act, the Secretary of State may from time to time specify what
 10 rules, regulations and orders affecting the conditions of service of all or any of His Majesty's forces in Burma shall be made only with his previous approval.

Control of Secretary of State with respect to conditions of service.

388. Nothing in this Part of this Act affects any right of appeal which members of His Majesty's forces
 15 in Burma enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

Saving of rights of appeal.

20 389. Any sums payable out of the revenues of Burma in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed
 25 as limiting the interpretation of the general provisions of this Part of this Act charging on the said revenues expenditure with respect to defence.

Pay, &c., of members of forces to be charged on revenues of Burma.

390. The provisions of the three last preceding sections shall apply in relation to persons who, not being
 30 members of His Majesty's forces, hold or have held posts in Burma connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

Provision as to certain civilian personnel.

35 *General Provisions as to Civil Services.*

391.—(1) Except as expressly provided by this Part of this Act, every person who is a member of a civil service of the Crown in Burma or holds any civil post under the Crown in Burma holds office during His
 40 Majesty's pleasure.

Tenure of office of persons employed in civil capacities in Burma.

A.D. 1935.

PART XIV.
—cont.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this subsection shall not apply—

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in Burma holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in Burma, is appointed under this Act to hold such a post may, if the Governor deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Recruit-
ment and
conditions
of service.

392.—(1) Except as expressly provided by this Part of this Act, appointments to the civil services of, and civil posts under, the Crown in Burma, shall, after the commencement of this Part of this Act, be made by the Governor or such person as he may direct.

(2) Except as expressly provided by this Part of this Act, the conditions of service of persons serving His Majesty in a civil capacity in Burma shall, subject to the provisions of this section, be such as may be prescribed by rules made by the Governor or some person authorised by him to make rules for the purpose.

(3) The said rules shall be so framed as to secure—

A.D. 1935.

PART XIV.
—cont.

5 (a) that, in the case of a person who before the commencement of this Part of this Act was serving His Majesty in a civil capacity in India or Burma, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority in Burma which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect ;

10 (b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him ; or

20 (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated ; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

25 as he would have had immediately before the commencement of this Part of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect ;

30 (c) that every other person serving His Majesty in a civil capacity in Burma shall have at least one appeal against any such order as aforesaid, not being an order of the Governor.

35 (4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the Legislature may regulate the conditions of service of persons serving His Majesty in a civil capacity in Burma

A.D. 1935. and any rules made under this section shall have effect
 PART XIV. subject to the provisions of any such Act :
 —cont.

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection. 5

(5) No rules made under this section and no Act of the Legislature shall be construed to limit or abridge the power of the Governor to deal with the case of any person serving His Majesty in a civil capacity in Burma 10 in such manner as may appear to him to be just and equitable :

Provided that where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that 15 provided by that rule or Act.

Application
 of preceding
 section to
 railway
 services and
 officials of
 High Court.

393.—(1) In its application to appointments to, and to persons serving in, the railway services, the last preceding section shall have effect as if for any reference to the Governor in subsections (1), (2) and (5) there 20 were substituted a reference to the Railway Board.

(2) In framing rules for the regulation of recruitment to superior railway posts the Railway Board shall consult the Public Service Commission, but, save as aforesaid, it shall not be obligatory on the Board to 25 consult with, or otherwise avail themselves of the services of, the Commission.

(3) In its application to appointments to, and to persons serving on, the staff attached to the High Court, the said section shall have effect as if for any reference 30 to the Governor in subsections (1), (2) and (5) there were substituted a reference to the chief justice :

Provided that—

(a) the Governor may in his discretion require that in such cases as he may in his discretion 35 direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Public Service Commission ;

(b) rules made under the said subsection (2) by the chief justice shall, so far as they relate to salaries or pensions, require the approval of the Governor.

A.D. 1935.
PART XIV.
—cont.

5 **394.** Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the police forces shall be such as may be determined by or under the Acts relating to those forces respectively.

Special provisions as to police.

10 *Recruitment by Secretary of State and provisions as to certain civil posts.*

395.—(1) There shall be civil services in Burma corresponding to the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service, which shall be known respectively as the Burma Civil Service (Class 1), the Burma Medical Service (Class 1) and the Burma Police (class 1), and appointment to those services shall be made by the Secretary of State.

Services recruited by the Secretary of State.

(2) The Secretary of State may also make appointments to any service or services which at any time he may deem it necessary to establish in Burma for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

396. If, after the commencement of this Part of this Act, circumstances arise which in the opinion of the Secretary of State render it necessary for him so to do in order to secure efficiency in irrigation or the prevention of flooding, he may appoint persons to any civil service of, or civil post under, the Crown in Burma, concerned with those matters.

Special provision as to irrigation.

A.D. 1935.
PART XIV.
—cont.
Reserved
posts.

397.—(1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor which the Governor is by or under this Act required to exercise in his discretion), which are normally to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in Burma, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

(a) be kept vacant for more than three months ; or

(b) be filled otherwise than by the appointment of such a person as aforesaid ; or

(c) be held jointly with any other such post.

(2) Appointments to the said posts (hereafter in this chapter referred to as “ reserved posts ”) shall be made by the Governor, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament, and if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

Conditions
of service,
pensions,
&c., of
persons
recruited by
Secretary of
State.

398.—(1) The conditions of service of all persons appointed to a civil service in Burma by the Secretary of State shall—

(a) as respects pay, leave and pensions, be such as may be prescribed by rules to be made by the Secretary of State ;

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and in so far and so long as provision is not made by such rules, by rules to be made by the Governor or some person authorised by the Governor to make rules for the purpose.

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service. A.D. 1935.
PART XIV.
—cont.

(2) Any salary, allowances or pension payable to, or in respect of, and Government contributions in respect of any such person as aforesaid to any pension fund or provident funds, shall be charged on the revenues of Burma.

(3) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(4) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in Burma in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor to deal with the case of any such person in such manner as may appear to him to be just and equitable :

Provided that where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

399.—(1) If any person appointed to a civil service by the Secretary of State is aggrieved by an order made by any authority in Burma affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain to the Governor, and the Governor shall examine into the complaint and cause such action to be taken thereon as appears to him in his discretion to be just and equitable. Rights in
respect of
com
appeals, &c.

(2) No order made by any authority in Burma which punishes or formally censures any such person

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PART XIV.
—cont.

as aforesaid or affects adversely his emoluments or rights in respect of pension or decides adversely to him the subject-matter of any memorial, shall be made except by the Governor, exercising his individual judgment. 5

(3) Any person appointed to a civil service by the Secretary of State may appeal to the Secretary of State against any order made by any authority in Burma which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated. 10

(4) Any sums ordered to be paid out of the revenues of Burma to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues. 15

Compensation for loss of rights.

400.—(1) If by reason of anything done under this chapter the conditions of service of any person appointed to a civil service in Burma by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of Burma such compensation as the Secretary of State may consider just and equitable. 20

(2) Any sum payable under this section from the revenues of Burma shall be charged on those revenues. 25

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor from the revenues of Burma by way of compensation to persons who are serving or have served His Majesty in Burma in cases to which those provisions do not apply. 30

Provision as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment. 35

Application of four last preceding sections to persons appointed

401.—(1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of this Part of this Act by the Secretary of State in Council 40

to a civil service of, or a civil post under, the Crown in Burma as they apply in relation to persons appointed to a civil service by the Secretary of State.

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PART XIV.
—cont.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply to any person who—

by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post ; or

(b) holds or has held any civil post under the Crown in Burma and is, or was when he was first appointed to such a post or to a civil post under the Crown in India, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of this Part of this Act to a civil service of, or to a civil post under, the Crown in Burma, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application by virtue of this section to persons serving in the railway services of Burma, the second of the four last preceding sections (which relates to the conditions of service, pensions, etc., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor in paragraph (b) of subsection (1) thereof and in subsection (4) thereof there were substituted a reference to the Railway Board.

(5) Nothing in this section shall be construed as charging on the revenues of Burma any pensions payable to or in respect of any person to whom this section applies who retired from the service of His Majesty before the commencement of this Part of this Act.

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PART XIV.

—cont.

Judges of
the High
Court.*Special Provisions as to Judicial Officers.*

402. The foregoing provisions of this chapter shall not apply to the judges of the High Court :

Provided that—

(a) for the purposes of this section a member 5
of any of the civil services of the Crown in
Burma who is acting temporarily as a judge
of the High Court shall not be deemed to be
a judge of that court ;

(b) nothing in this section shall be construed as 10
preventing the Orders in Council relating to
the salaries, leave and pensions of judges of
the High Court from applying to such of those
judges as were, before they were appointed
judges, members of a civil service of the Crown 15
in Burma or India, such of the rules relating
to that service or the corresponding service
in Burma as may appear to His Majesty to
be properly applicable in relation to them.

District
judges, &c.

403.—(1) Appointments of persons to be, and the 20
posting and promotion of, district judges in Burma shall
be made by the Governor, exercising his individual
judgment, and the minister concerned shall before
making any recommendation to the Governor as to any
such appointment consult the High Court. 25

(2) A person not already in the service of His
Majesty shall only be eligible to be appointed a district
judge if he is a barrister, a member of the Faculty of
Advocates, or a pleader and is recommended by the High
Court for appointment. 30

(3) In this and the next succeeding section the
expression “ district judge ” includes district and sessions
judge, sessions judge, additional district and sessions
judge, additional district judge and additional sessions
judge. 35

Subordinate
civil
judicial
service.

404.—(1) The Governor shall, after consultation
with the Public Service Commission and with the High
Court, make rules defining the standard of qualifications
to be attained by persons desirous of entering a sub-
ordinate civil judicial service. 40

In this section the expression “ subordinate civil
judicial service ” means a service consisting of persons

intended to fill civil judicial posts in Burma subordinate to that of district judge. A.D. 1935.

PART XIV.
—cont.

(2) The Public Service Commission, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to a subordinate civil judicial service make a list or lists of the persons whom they consider fit for appointment, and appointments shall be made by the Governor from the persons included in the list or lists.

(3) The posting and promotion of, and the grant of leave to, persons belonging to a subordinate civil judicial service and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

405. No recommendation shall be made for the grant of magisterial powers, or of enhanced magisterial powers, to any person save after consultation with the district magistrate of the district in which he is working. Subordinate criminal magistracy.

25 *Special Provisions as to Burma Frontier Service.*

406.—(1) Appointments to the Burma Frontier Service shall be made by the Governor in his discretion, and in relation to persons who are or have been members of that service the powers of the Governor under this chapter shall be exercised by him in his discretion. Burma Frontier Service.

(2) Except so far as the Governor in his discretion otherwise directs, no Act of the Legislature for regulating the conditions of service of persons serving His Majesty in a civil capacity in Burma shall apply in relation to persons who are members of the Burma Frontier Service.

(3) Any salaries, allowances or pensions payable to or in respect of any persons who are or have been members of the Burma Frontier Service, and any Government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of Burma.

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*Provisions for the protection of certain existing officers.*PART XIV.
—cont.Provision
for protec-
tion of
existing
officers of
“Central
Services
Class I and
II” and
“Provin-
cial Ser-
vices.”

407.—(1) No civil post in Burma which, immediately before the commencement of this Part of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II or a Provincial Service shall, if the abolition thereof would adversely affect any person who, immediately before the said date was a member of any such service, be abolished, except by the Governor, exercising his individual judgment. 5 10

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the commencement of this Part of this Act to a Central Service Class I or to a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except by the Governor, exercising his individual judgment. 15

(3) In relation to any person mentioned in this section who was appointed to a civil service of the Crown in Burma by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor there was substituted a reference to the Secretary of State. 20 25

Provisions
as to
certain per-
sons serving
in or
before 1924.

408.—(1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the commencement of this Part of this Act was classified as a superior service or post shall be charged on the revenues of Burma. 30

(2) Any pension payable to or in respect of any such person as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of Burma. 35

(3) Nothing in this section shall be construed as charging on the revenues of Burma any pension payable to or in respect of any person who retired from the service of His Majesty before the commencement of this Part of this Act. 40

409.—(1) Any pension payable to or in respect of any person who retired from a civil service of or a civil post under His Majesty before the coming into operation of this Act shall be paid out of the revenues of Burma if it would have been payable by the Local Government of Burma if this Act had not been passed.

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PART XIV.
—cont.Provision as
to other
persons
retiring
before com-
mencement
of this Part
of this Act.

Provided that nothing in this subsection shall apply to any pension which is charged on or payable out of the revenues of the Federation of India.

- (2) There shall be paid to the Federation out of the revenues of Burma and charged on those revenues such sums as may be required to make good to the revenues of the Federation any liability in respect of any pension charged on or payable out of the revenues of the Federation which would, if this Act had not been passed, have been a liability of the Local Government of Burma.

Miscellaneous provisions as to civil services.

410. In this chapter references to persons appointed to a civil service of the Crown in Burma include references to persons appointed, before the commencement of this Part of this Act, to a civil service of the Crown in India who were, before that date, serving in Burma and continue so to serve, and the requirement that no person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed shall, in relation to any such person appointed by any authority in India, be construed as a requirement that he shall not be so dismissed by any authority subordinate to such authority in Burma as the Governor may, in his discretion, decide to correspond to the authority by which he was appointed.

Application
to members
of Indian
services
serving in
Burma.

411. The powers conferred by the foregoing provisions of this chapter on the Secretary of State (other than powers in relation to defence services) shall not be exercisable by him except with the concurrence of his advisers and the advisers of the Secretary of State appointed under the provisions of this Act relating to India.

Provisions
as to
advisers.

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PART XIV.
—cont.Power by
Order in
Council to
transfer
certain
powers of
Secretary of
State.

412. His Majesty in Council may transfer to such authority as may be specified in his Order all or any of the powers conferred by the foregoing provisions of this chapter on the Secretary of State with respect to the making of appointments, but nothing in any such Order shall affect the functions of the Secretary of State in relation to persons appointed before the Order comes into operation. 5

*Public Service Commission.*Composi-
tion, staff
and
expenses of
Public
Service
Com-
mission.

413.—(1) There shall be a Public Service Com- mission, the chairman and other members whereof shall be appointed by the Governor in his discretion. 10

(2) The Governor in his discretion may by regula- tions—

(a) determine the number of members of the Commission, their tenure of office, and their conditions of service ; 15

(b) make provision with respect to the numbers of staff of the commission and their conditions of service. 20

(3) On ceasing to hold office—

(a) the chairman of the Commission shall be ineligible for further employment under the Crown in Burma ;

(b) no other member of the Commission shall be eligible for any other appointment under the Crown in Burma without the approval of the Governor in his discretion. 25

(4) The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of Burma. 30

Functions
of Public
Service
Commis-
sion.

414.—(1) It shall be the duty of the Public Service Commission to conduct examinations for appointments to civil services. 35

(2) The Secretary of State, as respect services and posts to which appointments are made by him, and the Governor in his discretion as respects other services and

posts, may make regulations specifying the matters on which either generally or in any particular class of case or in any particular circumstances it shall not be necessary for the Public Service Commission to be consulted but, 5 subject to regulations so made, the Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts ;
- 10 (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers ;
- 15 (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in Burma, including memorials or petitions relating to such matters ;
- 20 (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be 25 paid out of the revenues of Burma ;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in Burma, and any question as to the amount of any such 30 award ;
- (f) on any claim by a person serving His Majesty in a civil capacity in Burma that his conditions of service have been adversely affected by the separation of Burma from India ;

35 and it shall be the duty of the Commission to advise on any matter so referred to them and on any other matter which the Governor in his discretion may refer to them.

415. Subject to the provisions of this section, an 40 Act of the Legislature may provide for the exercise of additional functions by the Public Service Commission :

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PART XIV.
—cont.

Power to
extend
functions

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PART XIV.
—cont.of Public
Service
Commis-
sion.

Provided that—

- (a) no Bill or amendment for the purpose afore-
said shall be introduced or moved in either
Chamber of the Legislature without the pre-
vious sanction of the Governor in his dis- 5
cretion ; and
- (b) it shall be a term of every such Act that the
functions conferred by it shall not, except
with the consent of the Secretary of State, be
exercisable in relation to any person appointed 10
to a service or a post by the Secretary of State
or by the Secretary of State in Council, any
officer in His Majesty's Forces, or any holder
of a reserved post.

Chaplains.

15

Provisions
as to
chaplains.

416. The Secretary of State may appoint chaplains
to minister in Burma, and the foregoing provisions of
this Part of this Act shall, with any necessary modifica-
tions, apply in relation to the chaplains in Burma
appointed by him and by the Secretary of State in Council 20
as they apply in relation to members of the civil services
in Burma to which appointments are made by the
Secretary of State.

*General.*Indemnity
for past
acts.

417.—(1) No proceedings civil or criminal shall be 25
instituted in Burma against any person in respect of
any act done or purporting to be done in the
execution of his duty as a servant of the Crown in India
or Burma before the commencement of this Part of this
Act, except with the consent of the Governor in his 30
discretion.

(2) Any civil or criminal proceedings instituted in
Burma, whether before or after the commencement of
this Part of this Act, against any person in respect of any
act done or purporting to be done in the execution of his 55
duty as a servant of the Crown in India or Burma
before the said date shall be dismissed unless the court is
satisfied that the acts complained of were not done in
good faith, and where any such proceedings are dismissed
the costs incurred by the defendant shall, in so far as 40

they are not recoverable from the persons instituting the proceedings, be charged on the revenues of Burma.

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PART XIV.
—cont.

418. Any pension payable to or in respect of a person who—

Exemption
of pensions
from taxa-
tion in
Burma.

5 (a) before the commencement of this Part of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(b) after the commencement of this Part of this Act—

10 (i) serves in Burma as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in Burma by His Majesty or the Secretary of State; or

15 (iii) holds a reserved post,

shall be exempt from all taxation imposed by or under any existing Indian or Burman law or any law of the Legislature, if the person to whom the pension is payable is residing permanently outside Burma.

20 **419.** Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil service of the Crown in India which were in force immediately before the commencement of this Part
25 of this Act, shall, notwithstanding the repeal of that Act, continue in force in Burma so far as consistent with this Act, and shall then be deemed to be rules made under the appropriate provisions of this Act.

Transi-
tional
provisions.

420.—(1) In this chapter—

Interpreta-
tion, &c.

30 the expressions "Central Service Class I," "Central Service Class II" and "Provincial Service" mean respectively the services which were immediately before the passing of this
35 Act, Central Services Class I, Central Services Class II and Provincial Services within the meaning of the classification rules then in force under section ninety-six B of the Government of India Act;

40 references to dismissal from His Majesty's service include references to removal from His Majesty's service.

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PART XIV.

—cont.

(2) The Rules Publication Act, 1893, shall not apply to any rules or regulations made under this chapter.

(3) The inclusion in this chapter of provisions expressly requiring the Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from his special responsibility for the securing to members of the Public Services of any rights provided for them by or under this Act and the safeguarding of their legitimate interests. 5

CHAPTER X.

10

PROPERTY, CONTRACTS, LIABILITIES AND SUITS.

Provision as
to existing
Government
property.

421.—(1) Lands and buildings in Burma which immediately before the commencement of this Part of this Act were vested in His Majesty for the purposes of the government of India shall, as from that date, vest in His Majesty for the purposes of the government of Burma. 15

(2) Subject to the provisions of the preceding subsection, all property which, by virtue of any delegation from the Secretary of State in Council or otherwise, is at the commencement of this Part of this Act in the possession or under the control of the Governor of Burma in Council shall, on and after that date, be deemed to be in the possession or under the control of the Government of Burma, and all credits and debits of the Governor of Burma in Council in account with the Governor-General of India in Council shall be deemed to be credits and debits of the Government of Burma. 20 25

(3) In this section “property” includes moneys, securities, bank balances, and movable property of any description. 30

Power to
acquire
property
and to
make
contracts,
&c.

422.—(1) The executive authority of Burma shall extend, subject to any Act of the Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the government of Burma and to the purchase or acquisition of property on behalf of His Majesty for those purposes, and to the making of contracts : 35

Provided that an official residence of the Governor shall not be sold or diverted to other use, except with the concurrence of the Governor in his discretion. 40

(2) All property acquired for the purposes of the government of Burma shall vest in His Majesty for those purposes.

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PART XIV.
—cont.

(3) All contracts made in the exercise of the executive authority of Burma shall be expressed to be made by the Governor, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Part 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 either of them be personally liable in respect thereof.

423.—(1) The Government of Burma may sue and be sued by the name of the Government of Burma, and without prejudice to the provisions of the next succeeding section, may, subject to any provisions which may be made by Act of the Legislature, sue or be sued in relation to their affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

Suits and proceedings.

(2) Rules of court may provide that, where the Government of Burma or the Railway Board sue or are sued in the United Kingdom, service of all proceedings may be effected upon such person in the United Kingdom as may be designated in the rules as the person on whom service of such proceedings is to be effected.

424.—(1) Any contract made before the commencement of this Part of this Act by, or on behalf of, the Secretary of State in Council shall as from that date, if it was made solely in connection with the affairs of Burma, have effect as if it had been made on behalf of the Government of Burma.

Rights and liabilities of Secretary of State in Council.

(2) Any proceedings relating to contracts or liabilities solely in connection with the affairs of Burma which,

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PART XIV.

—cont.

if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of this part of this Act or arising under any contract or statute made or passed before that date, be brought 5 against the Government of Burma, or, at the option of the person by whom the proceedings are brought, against the Secretary of State.

The provisions of this subsection shall apply with respect to proceedings arising under any contract declared 10 by the terms thereof to be supplemental to any such contract as is mentioned therein as they apply in relation to the contracts so mentioned.

(3) If at the commencement of this Part of this Act any legal proceedings are pending in the United 15 Kingdom or Burma to which the Secretary of State in Council is a party, the Secretary of State shall be substituted in those proceedings for the Secretary of State in Council.

(4) Any contract made in respect of the affairs 20 of Burma by or on behalf of the Secretary of State after the commencement of this Part of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State, and any such proceedings 25 may be brought accordingly.

(5) Any sum ordered to be paid by way of debt, damages or costs, and any costs or expenses incurred in, or in connection with, any proceedings mentioned in this section by the Secretary of State, the Secretary of 30 State in Council or the Government of Burma shall be paid out of the revenues of Burma.

(6) Nothing in this section shall be construed as imposing any liability upon the Exchequer of the United Kingdom in respect of any debt, damages, costs or 35 expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of this Act securing obligations of the Secretary of State in Council on the revenues of the 40 Federation of India and every Province in India.

CHAPTER XI.

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PART XIV.

—cont.

MISCELLANEOUS PROVISIONS AS TO RELATIONS WITH INDIA.

425. Whereas it may appear that the distribution of Financial settlement as between India and Burma. property and liabilities effected by this Act as between India and Burma may result in an undue burden on the revenues of the Federation, His Majesty in Council may, if he thinks it just so to do, make provision for the payment to the revenues of the Federation out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper.

426. With a view to preventing undue disturbance of trade between India and Burma in the period Provisions as to Customs duties, &c. immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty in Council may give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma, and with respect to ancillary and related matters.

427. His Majesty in Council may make provision for the grant of relief from any Burman tax on income Relief in respect of tax on income taxable both in India and Burma. in respect of income taxed or taxable by or under the law of the Federation of India.

428. His Majesty in Council may make such provision with respect to the monetary system of Burma and matters connected therewith and ancillary thereto Provisions as to monetary system. as he thinks fit and in particular, but without prejudice to the generality of this section, such provisions as may appear to him to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of this Part of this Act with the approval of the Secretary of State by the Governor of Burma in Council.

429. His Majesty in Council may direct that Provisions as to immigration from India. during such period as may be specified in the Order immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed

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PART XIV.
—cont.

before the commencement of this Part of this Act between the Governor of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions :

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Part of this Act, by the Governor with the Governor-General of India or the Governor-General of India in Council.

CHAPTER XII

PROVISIONS IN EVENT OF FAILURE OF
CONSTITUTIONAL MACHINERY 15

Power of
Governor
to issue
proclama-
tions.

430.—(1) If at any time the Governor is satisfied that a situation has arisen in which the government of Burma cannot be carried on in accordance with the provisions of this Part of this Act, he may by Proclamation— 20

(a) declare that his functions 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 body or authority in Burma ;

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable to give 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 body or authority in Burma : 30

Provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by the High Court or to suspend, either in whole or in part, the operation of any provisions of this Part of this Act relating to the High Court. 35

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation. 40

(3) A Proclamation under this section—

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

PART XIV.
—cont.

5 (b) unless it is a Proclamation revoking a previous Proclamation, 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.

• 10 (3) The functions of the Governor under this section shall be exercised by him in his discretion.

CHAPTER XIII.

PROVISIONS AS TO SECRETARY OF STATE.

15 **431.**—(1) There shall be not more than three persons, Advisers to Secretary of State. to be appointed from time to time by the Secretary of State, whose duty it shall be to advise the Secretary of State on any matter relating to Burma on which he may desire their advice.

20 (2) One at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be a person who has held office for at least ten years under the Crown in Burma and has not last ceased to perform in Burma official duties under the Crown more than two years before the date of
25 his appointment as an adviser under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of five years and shall not be eligible for reappointment :

Provided that—

30 (a) any person so appointed may by writing under his hand resign his office to the Secretary of State ;

35 (b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of
40 sitting or voting in either House of Parliament.

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PART XIV.

—cont.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty pounds a year and also to any of them who at the date of his appointment was domiciled in Burma a subsistence allowance of six hundred pounds a year.

(6) Subject to the provisions of this Act relating to the functions of the Secretary of State with respect to the public services in Burma, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Part of this Act which requires that the Secretary of State shall obtain the concurrence of any body of advisers shall be deemed to be satisfied if at a meeting of those advisers he obtains the concurrence of at least one half of those present at the meeting.

Contributions from revenues of Burma to expenses of Secretary of State in certain circumstances.

432.—(1) There shall be charged on and paid out of the revenues of Burma into the Exchequer such periodical or other sums as may from time to time be agreed between the Governor and the Treasury in respect of so much of the expenses of the Department of the Secretary of State as is attributable to the performance on behalf of the Government of Burma of such functions as it may be agreed between the Secretary of State and the Governor that that department should so perform.

(2) Nothing in this Part of this Act shall be construed as imposing upon the revenues of Burma any liability in respect of the salary of the Secretary of State or, subject to the provisions of subsection (1) of this section, any liability in respect of the expenses of his department.

(3) Any expenses incurred with the consent of the Treasury by the Secretary of State for the purposes of this Part of this Act shall be defrayed out of moneys provided by Parliament.

CHAPTER XIV.

MISCELLANEOUS.

Power of His Majesty to delimit boundaries of Burma.

433. His Majesty in Council may from time to time declare any territory to be within or without Burma.

434. Nothing in this Part of this Act shall derogate from the right of His Majesty to grant pardons, reprieves, respites or remissions of punishment.

A.D. 1935.
PART XIV.
—cont.
Provision as to pardon.
Persons not to be subjected to disability by reason of race, religion, &c.

435.—(1) No subject of His Majesty domiciled in Burma shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in Burma or be prohibited by any law of Burma or any such grounds from carrying on any trade, business or profession in Burma.

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits either absolutely or subject to exceptions, the sale or mortgage of agricultural land in any particular area to any person not belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area ; or

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or customs having the force of law.

436.—(1) No person in Burma shall be deprived of his property save by authority of law.

Compulsory acquisition of land, &c.

(2) The Legislature shall not have power to make any law authorising the compulsory acquisition for public purposes of land belonging to private persons, unless the law provides for the payment of compensation for the property acquired.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of the rights of private persons therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the 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.

A.D. 1935.

PART XIV.

—cont.

Protection
of privileges
in respect of
land
revenue.Courts of
appeal in
revenue
matters.Elections
may be held
in advance
of the dates
fixed for the
commence-
ment of this
Part of this
Act.

437.—(1) The executive authority of Burma shall not be exercised, save on an order of the Governor in the exercise of his individual judgment, so as to derogate from any grant of land or of any right or privilege in respect of land revenue made for services rendered.

5

(2) Nothing in this section affects any remedy or a breach of any condition on which a grant was made.

438. No member of the Legislature shall be a member of any tribunal having jurisdiction to entertain appeals in revenue matters.

10

439.—(1) His Majesty may by Order in Council to be made at any time after the passing of this Act provide that the first elections of persons to serve as members of the Legislature shall be held in advance on such dates as will enable the Legislature to be fully constituted in accordance with the provisions of this Part of this Act before the date fixed for the commencement thereof.

15

(2) If any such Order is made the Governor shall have authority to take all such steps and to issue to officers subordinate to him all such orders or directions as may appear to him to be necessary or expedient as to secure that the object for which the Order is made is attained, and in particular but without prejudice to the generality of the foregoing words—

20

- (a) for the preparation of electoral rolls ;
- (b) with respect to the nomination of candidates ; and
- (c) with respect to the holding and method of conducting elections ;

25

and it shall be the duty of all officers serving in any capacity under the Crown in Burma to give effect to any such Orders or directions.

30

(3) A person shall not be disqualified for being elected or being a member of a Legislature elected under the foregoing provisions of this section by reason of the fact that he holds an office of profit as a non-official member of the Executive Council of the Governor or as a minister in the Province of Burma.

35

(4) A Legislature elected under the foregoing provisions of this section shall be deemed to be as duly constituted as if the relevant provisions of this Act had been in force at the material dates.

40

(5) Nothing in this section affects, or shall be construed as narrowing the interpretation of, section thirty-seven of the Interpretation Act, 1889. A.D. 1935.
PART XIV.
—cont.

440. Notwithstanding the repeal of the Government of India Act, but subject to the provisions of this Part of this Act, all the law in force in Burma immediately before the commencement of this Part of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority. Continuation of existing laws.

441. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that as from such date as may be specified in the Order any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consequential on the separation of India and Burma. Adaptation of existing laws.

In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in Burma the force of law.

442. If it appears to the Governor to be necessary so to do for the purpose of enabling the administration of Burma to be carried on effectively during the first year after the commencement of this Part of this Act, he may with the approval of the Secretary of State declare that any taxes or duties in force immediately before the commencement of this Part of this Act shall, notwithstanding that they would otherwise expire, continue in force for such further period not exceeding twelve months, as he may deem necessary unless sooner varied or repealed by Act of the Legislature and authorised, during a period not exceeding twelve months, such expenditure from the revenues of Burma as he may deem necessary. Temporary financial provisions.

443.—(1) If the Governor in his discretion thinks fit to direct that there shall be a High Commissioner for Burma in the United Kingdom, the Governor, exercising his individual judgment, may appoint a High Commissioner for Burma.

A. D. 1935. person to be High Commissioner and prescribe his salary
PART XIV. and conditions of service.

—cont.

(2) The High Commissioner shall perform on behalf of the Government of Burma and the Railway Board such functions in connection with the business of that Government and Board, and, in particular, such functions in relation to the making of contracts, as the Governor may from time to time direct. 5

(3) The provisions of chapter IX of this Part of this Act (which relates to the services in Burma) shall apply 10 in relation to appointments to and to persons serving on the staff of the High Commissioner for Burma as if the service of the members of his staff were service rendered in Burma.

No proceed-
ings to lie
against
Governor or
Secretary of
State.

444. No proceedings whatsoever shall lie in any court in Burma against the Governor or, subject to the foregoing provisions of this chapter, against the Secretary of State, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by either of them during his term of office. 15 20

Procedure
as respects
proposals
for amend-
ment of
certain pro-
visions of
Act and
Orders in
Council.

445.—(1) If at any time after the expiration of ten years from the commencement of this Part of this Act the Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, passes 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 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. 25 30

The Governor when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the effect which the making of the proposed amendment would have on the interests of any minority and the Secretary of State shall cause such statement to be laid before Parliament. 35 40

(2) The amendments referred to in the preceding sub-section are—

A.D. 1935.

PART XIV.

—cont.

5 (a) any amendment of the provisions relating to the composition of the Legislature or the method of choosing the members thereof ;

(b) any amendment of the provisions relating to the qualifications entitling persons to vote at elections.

10 (3) His Majesty in Council may at any time, whether or not ten years have elapsed from the commencement of this Part of this Act, and whether or not any such address as is mentioned in this section has been submitted to His Majesty, make in the provisions of this Act any such amendment as is referred to in sub-section (2) of
15 this section :

Provided that 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 take such steps
20 as His Majesty may direct for ascertaining the views of the Government and the Legislature.

446. His Majesty may, by Order in Council—

25 (a) direct that the whole or any specified part of any of the areas specified in Part I of the Eleventh Schedule to this Act shall be deemed to be, or be part of, an area specified in Part II of that Schedule ;

Power of His Majesty to amend the Eleventh Schedule.

30 (b) direct that the whole or any specified part of an area specified in Part II of the said Schedule shall be deemed not to be, or not to be part of, an area specified in that Schedule ;

(c) alter, but only by way of rectification of boundaries, any of the areas specified in that Schedule ;

35 (d) on any alteration of the boundaries of Burma or of His Majesty's territories therein, declare any territory not previously included in that Schedule to be, or to be part of, an area specified in Part I or in Part II of that Schedule ;

40 and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary or proper.

A.D. 1935.

PART XIV.
—cont.Orders in
Council.

447.—(1) Subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Part of this Act which expressly authorises the making of such an Order, 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 Order may be made either in the form of the draft, or with such amendments as both Houses 10 of Parliament may have agreed to recommend to His Majesty :

Provided that, if at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary 15 of State is of opinion that on account of urgency an Order in Council should be made under this Part of this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both House of Parliament.

(2) His Majesty in Council may by a subsequent 25 Order, made in accordance with the provisions of the preceding sub-section, revoke or vary any Order previously made by him in Council under this Part of this Act.

Interpre-
tation.

448.—(1) In this Part of the Act unless the context otherwise requires, the following expressions have the 30 meanings hereby respectively assigned to them, that is to say—

“ borrow ” includes the raising of money by the grant of annuities and “ loan ” and “ debt ” shall be construed accordingly ; 35

“ existing Indian or Burman law ” means any law, ordinance, order, byelaw, rule or regulation (as in force in Burma) passed or made by any legislature, authority or person in any territories for the time being comprised in India, being a 40 legislature, authority or person having power to make such a law.

“Local Government” means the local government of A.D. 1935.
Burma within the meaning of the Government of PART XIV.
India Act or any Act repealed by that Act in —cont.
force at the relevant time ;

5 “pension” means a pension whether contributory
or not, of any kind whatsoever payable to or
in respect of a person in or lately in the service
of the Crown in India or Burma, and includes
10 retired pay so payable, a gratuity so payable and
any sum or sums so payable by way of the
return with or without interest of subscriptions
to a provident fund ;

“pleader” includes advocate ;

15 “public notification” means a notification in the
official Gazette of Burma.

(2) Any reference in this Part of this Act to Acts
of the Legislature shall be construed as including a
reference to an Ordinance made by the Governor or a
Governor’s Act.

20 (3) References in this Act to the taking of an oath
include references to the making of an affirmation.

(4) As respects the period elapsing between the
commencement of Part III of this Act and the establish-
ment of the Federation of India, any reference in this
25 Part of this Act to the Federation shall be construed as
a reference to British India, the Governor-General in
Council or the Governor-General as the context and the
circumstances may require, and any reference to the
Governor-General shall, if the circumstances so require
30 be construed as including a reference to the Governor-
General in Council.

PART XV.

COMMENCEMENT, REPEALS, &c.

35 **449.**—(1) Part II of this Act shall come into force Commence-
on such date as His Majesty may appoint by the Pro-ment.
clamation establishing the Federation and the date so
appointed is the date referred to in this Act as the date
of the establishment of the Federation.

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PART XV.
—cont.

(2) The remainder of this Act shall, subject to any express provision to the contrary, come into force on such date as His Majesty in Council may appoint and the said date is the date referred to in this Act as the commencement of Part III of this Act and referred to in Part XIV of this Act as the commencement of that Part. 5

(3) Notwithstanding anything in this section, His Majesty in Council may, for the purpose of bringing any Part of this Act into operation, fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act. 10

Charge of
expenses on
revenues
raised in
India or
Burma.

450. Where under the provisions of this Act any expenditure is charged on, or is to be defrayed out of, the revenues of any of the Governments constituted by this Act or of the Governor-General in Council, that expenditure, whether expenditure heretofore charged on or defrayable out of the revenues of India or not, shall be charged and defrayed in accordance with the provisions of this Act. 15 20

Repeals.

* 451. The Government of India Act shall be repealed and the other Acts mentioned in the Fifteenth Schedule to this Act shall also be repealed to the extent specified in the third column of that Schedule : 25

Provided that without prejudice to any other provisions of this Act and to the provisions of the Interpretation Act, 1889, relating to the effect of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and any such appointment shall have effect as if it were an appointment to the corresponding office under this Act. 30

* Sir Thomas Inskip (Attorney-General) made an amendment to Clause 451, providing that nothing in the clause should affect the Preamble to the Govt. of India Act, 1919. Sir Thomas said it had been suggested earlier that the amendment should be made in the Fifteenth Schedule, but decided that it would be more appropriate to make the addition to the last clause of the Bill. Mr. Morgan Jones said that the Government were dissatisfied with the amendment which they considered was inadequate statement in the position.

SCHEDULES.

A.D. 1935.

FIRST SCHEDULE.

Sections
5, 18.

COMPOSITION OF THE FEDERAL LEGISLATURE.

PART I.

REPRESENTATIVES OF BRITISH INDIA.

General Qualification for Membership.

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

- 10 (a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation; and
- (b) 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; and
- 15 (c) possesses such, if any, of the other qualifications specified in this Part of this Schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The Council of State.

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to Governors' Provinces, Chief Commissioners' Provinces and communities in the manner shown in the relevant Table of Seats appended to this Part of this Schedule, and six seats shall be filled by persons chosen by the Governor-General in his discretion.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community.

5. Subject to the provisions of the three next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years :

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

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1ST SCH.

—cont.

6. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats so allotted as aforesaid to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, 5 one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of 10 the provisions of this paragraph.

7. Of the seats allotted to any Governors' Province, Chief Commissioners' Province or community the numbers specified in the third, fourth and fifth columns of the Table respectively shall be seats to be filled upon the first constitution of the Council, 15 by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

8. Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be 20 chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

9. In each of the following Provinces, that is to say, Madras, Bombay, the United Provinces and Bihar, such of the members 25 of the Legislative Council of the Province as are Muhammadans shall be entitled—

- (a) upon the first constitution of the Council, to choose persons to fill two of the seats allotted to that Province, being two seats which under the foregoing provisions 30 will by effluxion of time become vacant at different dates ;
- (b) at any subsequent triennial election when seats allotted to the Province fall to be filled, to choose a person to fill one seat ; and 35
- (c) on a casual vacancy occurring in a seat theretofore held by a person chosen in accordance with this paragraph to choose a person to fill that seat.

10. Subject to the provisions of the last preceding paragraph, persons to fill the seats allotted to a Governor's Province shall, 40 except in the case of a casual vacancy, be chosen according to the principle of proportional representation by means of the single transferable vote—

- (i) if the Province has a Legislative Council, by such members thereof as are not Anglo-Indians, Europeans or Indian 45 Christians ; and

- (ii) if the Province has not a Legislative Council, by the members of a Provincial Electoral College constituted in accordance with the provisions of the next succeeding paragraph. A. D. 1935,
1st Sess.
—cont.

5 When a casual vacancy occurs in a seat theretofore held by person chosen in accordance with this paragraph, a person to fill the seat shall be chosen by such of the members of the Legislative Council or, as the case may be, of the Electoral College as are members of the same community as the person by
10 whom the seat was held.

11. The composition of the Provincial Electoral Colleges referred to in the preceding paragraph shall be as shown in the following Table :—

Province.	General Seats.	Sikh Seats.	Muham- madan Seats.	Total.
15 Punjab	16	11	30	57
Central Provinces and Berar	31	—	5	36
20 Assam	21	—	12	33
North-West Frontier Province	5	1	19	25
Orissa	27	—	3	30
Sind	10	—	18	28

25 The members of a Provincial Electoral College shall be chosen by voters possessing such qualifications as may be prescribed and voting in territorial constituencies formed for the purposes of this paragraph, being either general, Sikh or Muhammadan constituencies.

30 To each such constituency one or more seats in the Electoral College shall be assigned.

In a general constituency formed for the purposes of this paragraph, no person shall be entitled to vote who is entitled to vote in a Sikh or Muhammadan constituency so formed, and in

35 a Sikh or Muhammadan constituency so formed no person shall be entitled to vote who is not a Sikh or Muhammadan, as the case may be.

12. Persons to fill the seats allotted to Chief Commissioners' Provinces shall be chosen—

- 40 (i) in the case of Coorg by the Legislative Council of the Province, and
(ii) in other cases, in such manner as may be prescribed.

13. Persons to fill the seats allotted to the Anglo-Indian European and Indian Christian communities shall be chosen

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1ST SCH.
—cont.

by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

5

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

10

14. A person shall not be qualified to hold a seat in the Council of State unless—

- (a) in the case of a seat allotted to a Governor's Province, he is qualified to hold a seat in the Legislative Council or, as the case may be, the Provincial Electoral College of that Province; 15
- (b) in the case of a seat allotted to a Chief Commissioner's Province or a community, he possesses such qualifications as may be prescribed.

The Federal Assembly.

25

15. The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule

16. To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number of seats, specified in the second column opposite to that Province, and of those seats— 25

- (i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes; 30
- (ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (a) the Sikh community; (b) the Muhammadan community; (c) the Anglo-Indian community; (d) the European community; (e) the Indian Christian community; (f) the interests of commerce and industry; (g) land holders; and (h) the interests of labour; and 35
- (iii) the number specified in the thirteenth column shall be the number of seats to be filled by women. 40

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

17. Subject to the provisions of the next succeeding para A.D. 1935.
graph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats. Sikh seats or Muham-
madan seats shall be chosen by electorates consisting of such of

5 the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote.

10 18. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governors' Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly,—

15 (a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to this Act, on the occasion of the last general election of members of the Legislative
20 Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes ;

(b) the primary electorate so constituted shall choose such number of persons as is equal to four times the
25 number of general seats in the Federal Assembly reserved in the Province for members of the scheduled castes ; and

(c) no person who is not so chosen shall be qualified to be chosen to fill such a seat.

30 Rules made under this Part of this Schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

19. For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an
35 Electoral College consisting of such women as are members of the Legislative Assembly of any Governors' Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the College.

Rules regulating the conduct of elections by the women's
40 Electoral College shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

20. For the purpose of choosing persons to fill the Anglo-Indian, European and Indian-Christian seats in the Federal Assembly
45 there shall be for British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian-Christian seat in the Legislative Assembly of any

1ST SCH.
- cont.

A.D. 1935.
1st Sch.
—cont.

Governors' Province, and the person to fill an Anglo-Indian, European or Indian-Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college.

In choosing at a general election the persons to fill the Indian-Christian seats allotted to the Province of Madras the Indian-Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote. 5

21. Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, landholders and representatives of labour shall be chosen— 10

- (a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed ; 15
- (b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed ; 20
- (c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies, and in accordance with such manner of voting as may be prescribed ;
- (d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed ; and 25 30
- (e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

22. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen— 35

- (a) in the case of Coorg, by the members of the Legislative Council ; and
- (b) in other cases in such manner as may be prescribed. 40

23. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

- (i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian-Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, 45

in the case of Coorg, the Legislative Council, of that Province ;

(ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

A.D. 1935.

1ST SCH.
—cont.

5

General.

24. In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

10

“a European” means a British subject of European descent in the male line who is resident in British India and—

(a) who was born, or has a domicile, in the United Kingdom, a British possession or an Indian State ; or

(b) whose father was so born, or has, or had up to the date of the birth of the person in question, such a domicile ;

15

“an Anglo-Indian” does not include a European but, subject as aforesaid, means a British subject who is resident in British India and—

(a) who is of European descent in the male line ; or

20

(b) who is of mixed Asiatic and non-Asiatic descent, and whose father, grandfather or more remote ancestor in the male line was born in the continent of Europe, Canada, Newfoundland, New Zealand, Australia, the Union of South Africa or the United States of America ;

25

“the scheduled castes” means such castes, races and tribes, corresponding to the classes of persons formerly known as “the depressed classes,” as His Majesty in Council may specify ; and

30

“prescribed” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

35

25. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to—

40

(i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies ;

45

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—cont.

- (ii) the nomination of candidates.
- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes ;
- (iv) the expenses of candidates at elections ;
- (v) corrupt practices and other offences at or in connection with elections ;
- (vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly ; and
- (vii) the manner in which rules are to be carried into effect.

TABLE OF SEATS.

*The Council of State.**Representatives of British India.*

1. Province or Community.	2. Total of Seats.	Number of Seats to be filled originally.			20
		3. For three years only.	4. For six years only.	5. For nine years.	
Madras	20	—	10	10	25
Bombay	16	8	—	8	
Bengal	20	10	—	10	
United Provinces	20	10	10	—	30
Punjab	16	8	8	—	
Bihar	16	—	8	8	
Central Provinces and Berar	8	—	8	—	35
Assam	5	—	5	—	
North-West Frontier Province	5	—	—	5	
Orissa	5	5	—	—	40
Sind	5	5	—	—	
British Baluchistan	1	—	—	1	
Delhi	1	—	—	1	40
Ajmer-Merwara	1	—	—	1	
Coorg	1	—	—	1	
Anglo-Indians	1	—	—	1	40
Europeans	7	3	1	3	
Indian Christians	2	1	—	1	
Totals	150	50	50	50	

There shall also be six seats not allotted to any province or community but to be filled by persons chosen by the Governor-General in his discretion.

TABLE OF SEATS.
The Federal Assembly.
Representatives of British India.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Province.	Total Seats.	General Seats :—		Sikh Seats.	Muham- madan Seats.	Anglo- Indian Seats.	Euro- pean Seats.	Indian Christian Seats.	Seats for repre- sentatives of com- merce and industry.	Land holders Seats.	Seats for repre- sentatives of labour.	Women's Seats.
		Total of general Seats.	General seats reserved for Sched- uled castes.									
Madras	37	19	4	—	8	1	1	2	2	1	1	2
Bombay	30	13	2	—	6	1	1	1	3	1	2	1
Bengal	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces	37	19	3	—	12	1	1	1	—	1	1	1
Punjab	30	6	1	6	14	—	1	1	—	1	—	1
Bihar	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces and Berar	15	9	2	—	3	—	—	—	—	1	1	1
Assam	10	4	1	—	3	—	1	1	—	—	1	—
North-West Frontier Province	5	1	—	—	4	—	—	—	—	—	—	—
Orissa	5	4	1	—	1	—	—	—	—	—	—	—
Sind	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan	1	—	—	—	1	—	—	—	—	—	—	—
Delhi	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara	1	1	—	—	—	—	—	—	—	—	—	—
Coorg	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats	4	—	—	—	—	—	—	—	3	—	1	—
Totals	250	105	19	6	82	4	8	8	11	7	10	9

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1st SECT.
—cont.

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1st Sch.
—cont.

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," 5 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 10 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 15 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 20 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 25 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 30 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 35 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 40 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 45 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,—

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—cont.

- (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 : and
- (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.

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1ST SCH.
—cont.

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 Partabgarh, of Jhalawar, of 5 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 10 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 15 Ruler of a State mentioned in subparagraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in subparagraph (b) of that paragraph shall be entitled to three votes.

10. A seat in either Chamber allotted to a single State shall 20 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- 25 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 30 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 35 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 40 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 :

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Provided that—

- (a) until the Rulers of two of those States have so acceded, ^{1st Sch.} all the three seats shall remain unfilled ; and —cont.
- (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 Gujarat 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, 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 subparagraph 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 or 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.

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—cont.

13. The Governor-General may in his discretion 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— 5

(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 10 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 15 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 Schedule to the Table shall be construed as references to the Table as so varied. 20

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 25 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 30 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. 35

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 subsection (2) of section five of this Act— 40

(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 ; 45

(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 (ii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of States 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 all the States shall be taken to be the total population thereof as stated at the end of the Table.

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1ST SCH.

—cont.

TABLE OF SEATS.

*The Council of State and the Federal Assembly.*20 *Representatives of Indian States.*

1.	2.	3.	4.	5.
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal Assembly.	Population.
25				
		DIVISION I.		
Hyderabad . . .	5	Hyderabad . . .	16	14,436,148
30		DIVISION II.		
Mysore . . .	3	Mysore . . .	7	6,557,302
		DIVISION III.		
Kashmir . . .	3	Kashmir . . .	4	3,646,243
		DIVISION IV.		
35 Gwalior . . .	3	Gwalior . . .	4	3,523,070
		DIVISION V.		
Baroda . . .	3	Baroda . . .	3	2,443,007

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—cont.

1.	2.	3.	4.	5.
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal As- sembly.	Population.
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	1	400,694
Banganapalle		Banganapalle		39,218
Sandur		Sandur		13,583
DIVISION X.				
1. Udaipur	2	1. Udaipur	2	1,566,910
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	1	12. Partabgarh	1	76,539
Jhalawar- Shahpura		Jhalawar- Shahpura		107,890
16. Jaisalmer		Jaisalmer		54,233
Kishengarh	1	13. Jaisalmer	1	76,255
		Kishengarh		85,744

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1.	2.	3.	4.	5.	1ST SCH. —cont.
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal As- sembly.	Population.	
DIVISION XI.					
1. Indore . . .	2	1. Indore . . .	2	1,325,089	
10 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 . . .	1	243,430	
15 7. Dewas (Senior) . . .	1	Dewas (Senior) . . .		83,321	
Dewas (Junior) . . .		Dewas (Junior) . . .	1	70,513	
8. Jaora . . .	1	6. Jaora . . .		100,166	
Ratlam . . .		Ratlam . . .	1	107,321	
9. Panna . . .	1	7. Panna . . .		212,130	
20 Samthar . . .		Samthar . . .	1	33,307	
Ajaigarh . . .	1	Ajaigarh . . .		85,895	
10. Bijawar . . .		8. Bijawar . . .	1	115,852	
Charkhari . . .	1	Charkhari . . .		120,351	
Chhatarpur . . .		Chhatarpur . . .	1	161,267	
25 11. Baoni . . .	1	9. Baoni . . .		19,132	
Nagod . . .		Nagod . . .	1	74,589	
Maihar . . .	1	Maihar . . .		68,991	
Baraundha . . .		Baraundha . . .	1	16,071	
12. Barwani . . .	1	10. Barwani . . .		141,110	
30 Ali Rajpur . . .		Ali Rajpur . . .	1	101,963	
13. Jhabua . . .	1	11. Jhabua . . .		145,522	
Sailana . . .		Sailana . . .	1	35,223	
Sitamaui . . .	1	Sitamaui . . .		28,422	
14. Rajgarh . . .		12. Rajgarh . . .	1	134,891	
35 Narsingarh . . .	1	Narsingarh . . .		113,873	
Khilchipur . . .		Khilchipur . . .		45,583	
DIVISION XII.					
1. Cutch . . .	1	1. Cutch . . .	1	514,307	
2. Idar . . .	1	2. Idar . . .	1	262,660	
40 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 . . .	1	6. Rajpipla . . .	1	206,114	
Palanpur . . .		Palanpur . . .		264,179	
45 7. Dhrangadhra . . .	1	7. Dhrangadhra . . .	1	88,961	
Gondal . . .		Gondal . . .		205,846	
8. Porbandar . . .	1	8. Porbandar . . .	1	115,673	
Morvi . . .		Morvi . . .		113,023	

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—cont.

1.	2.	3.	4.	5.
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal As- sembly.	Population.
DIVISION XII—cont.				
9. Radhanpur	1	9. Radhanpur	1	70,530
Wankaner		Wankaner		44,259 10
Palitana		Palitana		62,150
10. Cambay	1	10. Cambay	1	87,761
Dharampur		Dharampur		112,031
Balasinor		Balasinor		52,525
11. Baria	1	11. Baria	1	159,429 15
Chhota Udepur		Chhota Udepur		144,640
Sant		Sant		83,531
Lunawada	1	Lunawada	1	95,162
12. Bansda		12. Bansda		48,839
Sachin		Sachin		22,107 20
Jawhar	1	Jawhar	1	57,261
Danta		Danta		26,196
13. Dhrol		Dhrol		27,639
Limbdi	1	Limbdi	1	40,088
Wadhwan		Wadhwan		42,602 25
Rajkot		Rajkot		75,540
DIVISION XIII.				
1. Kolhapur	2	1. Kolhapur	1	957,137
2. Sangli	1	2. Sangli	1	258,442
Savantvadi		Savantvadi		230,589 30
3. Janjira	1	3. Janjira	1	110,379
Mudhol		Mudhol		62,832
Bhor		Bhor		141,546
4. Jamkhandi	1	4. Jamkhandi	1	114,270
Miraj (Senior)		Miraj (Senior)		93,938 35
Miraj (Junior)		Miraj (Junior)		40,684
Kurundwad	1	Kurundwad	1	44,204
(Senior)		(Senior)		
Kurundwad		Kurundwad		39,583
(Junior).	1	(Junior).	1	
5. Akalkot		5. Akalkot		92,605 40
Phaltan		Phaltan		58,761
Jath	1	Jath	1	91,099
Aundh		Aundh		76,507
Ramdurg		Ramdurg		35,454 45

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					1st Ser. —cont.
1.	2.	3.	4.	5.	
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal As- sembly.	Population.	
DIVISION XIV.					
1. Patiala	2	1. Patiala	2	1,625,520	
10 2. Bahawalpur	2	2. Bahawalpur	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	
15 7. Tehri-Garhwal	1	7. Tehri-Garhwal	1	349,573	
8. Mandi	1	8. Mandi	1	207,465	
Bilaspur		Bilaspur		100,994	
Suket		Suket		58,408	
8. Tehri-Garhwal	1	9. Sirmur	1	148,568	
20 Sirmur		Chamba		146,870	
Chamba		10. Faridkot		164,364	
9. Faridkot	1	10. Malerkotla	1	83,072	
Malerkotla		Loharu		23,338	
Loharu					
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	
35 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					

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—cont.

1.	2.	3.	4.	5.
States and Groups of States.	Number of seats in Council of State.	States and Groups of States.	Number of seats in the Federal As- sembly.	Population. 5
DIVISION XVI—cont.				
4. Gangpur . . .	1	9. Dhenkanal . . .	3	284,326
Bamra . . .		Nayagarh . . .		142,406 10
Seraikela . . .		Seraikela . . .		143,525
Baud . . .		Baud . . .		135,248
Bonai . . .	1	Talcher . . .	3	69,702
5. Bastar . . .		Bonai . . .		80,186
Surguja . . .		Nilgiri . . .		68,594 15
Raigarh . . .		Bamra . . .		151,047
Nandgaon . . .				
6. Khairagarh . . .	1	10. Raigarh . . .	3	277,569
Jashpur . . .		Khairagarh . . .		157,400
Kanker . . .		Jashpur . . .		193,698 20
Korea . . .		Kanker . . .		136,101
Sarangarh . . .		Sarangarh . . .		128,967
		Korea . . .		90,886
		Nandgaon . . .		182,380
DIVISION XVII.				
States not men- tioned in any of the preceding Divisions, but de- scribed in para- graph 12 of this Part of this Sche- dule.	2	States not men- tioned in any of the preceding Divisions, but de- scribed in para- graph 12 of this Part of this Sche- dule.	5	2,852,197
				25
				30

Total population of the States in this Table : 78,801,912

SECOND SCHEDULE.

A.D. 1935.

PROVISIONS OF THIS ACT THE AMENDMENT WHEREOF IS Section 6.
NOT TO AFFECT THE VALIDITY OF THE
INSTRUMENT OF ACCESSION OF A STATE.

5 Part I, in so far as it relates to the Commander-in-Chief.

10 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;
15 the functions of the council of ministers, and the choosing and summoning of
ministers and their tenure of office; 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,
20 the financial stability and credit of the Federal Government, the rights of
Indian States, and the discharge of his functions by or under the Act in his
discretion or in the exercise of his individual judgment; the provisions relating
to His Majesty's Instrument of Instructions to the Governor-General;
25 the superintendence of the Secretary of State; and the making of rules by the
Governor-General for the transaction of, and the securing of transmission to him
of information with respect to, the business of the Federal Government.

35 „ chapter 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 they are to be chosen;
40 the disqualifications for membership of the Council of State and of the
Federal Assembly in relation to the representatives of the State; the procedure
for the introduction and passing of Bills; joint sittings of the two
45 Chambers; the assent to Bills, or the

A.D. 1935.
2ND SCH.
—cont.

Part II, chapter III,
—cont.

withholding assent from Bills by the Governor-General; the reservation of Bills for the significance of His Majesty's pleasure; the annual financial statement; the charging on the 5 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 10 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 15 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; sup- 20plementary financial statements; the making of rules by the Governor-General for prohibiting the discussion or the a king of questions on any matter connected with any Indian State; the 25 making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

„ chapter IV, save with respect to the power of the 30 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, chapter I. The whole chapter. 35

„ chapter II, save with respect to the special responsibility of the Governor relating to the rights of Indian States and the superintendence of the Governor-General in relation thereto. 40

„ chapter 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 any Indian State. 45

„ chapter IV. The whole chapter.

„ chapter V. „

„ chapter VI. „

A.D. 1935

2ND SCH.
—cont.

Part IV.	The whole Part.
Part V, chapter I.	save with respect to the power of the Federal Legislature to make laws extending to a State or the subjects thereof ; 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 ; the provisions of the chapter relating to inconsistency between a Federal law and a State law.
5	
10	
„ chapter II.	save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters reserved to the discretion of the Governor-General in relation to defence or external affairs : 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.
15	
20	
„ chapter III.	The whole chapter.
25 Part VI,	save in so far as the provisions of that Part relate to Indian States.
Part VII, chapter I,	in so far as it relates to Burma.
„ chapter II,	save with respect to loans and guarantees to Federated States.
30 „ chapter III.	The whole chapter.
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 determination of questions arising between the Authority and the Ruler of a Federated State.
35	
Part IX, chapter I,	in so far as it relates to appeals to the Federal Court from High Courts in British India ; the power of the Governor-General to refer questions of law to the Federal Court ; 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.
40	
45	

A.D. 1935.	Part IX, chapter II.	The whole chapter.	
2ND SCH. —cont.	Part X.	The whole Part.	
	Part XI.	The whole Part.	
	Part XII,	save with respect to resolutions of the Federal Legislature or any Provincial Legislature recommending amendments of this Act or Orders in Council made thereunder.	5
	Part XIII.	The whole Part.	
	Part XIV.	„	10
	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.	15
	Fifth Schedule.	The whole Schedule.	
	Sixth Schedule.	„	
	Seventh Schedule.	Any entry in the Legislative Lists which has not been accepted by the State as a Federal subject.	20
	Eighth Schedule.	The whole Schedule.	
	Ninth Schedule.	„	
	Tenth Schedule.	„	
	Eleventh Schedule.	„	
	Twelfth Schedule.	„	25
	Thirteenth Schedule.	„	
	Fourteenth Schedule.	„	

THIRD SCHEDULE.

A.D. 1935.

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

1. There shall be paid to the Governor-General and to the
 5 Governors of the Provinces the following annual salaries, that is
 to say :—
- | | | |
|----|---|-----------------|
| | The Governor-General | 250,800 rupees. |
| | The Governor of Madras | |
| | The Governor of Bombay | |
| 10 | The Governor of Bengal | 120,000 rupees. |
| | The Governor of the United Provinces | |
| | The Governor of the Punjab | 100,000 rupees. |
| | The Governor of Bihar | |
| 15 | The Governor of the Central Province and
Berar | 72,000 rupees. |
| | The Governor of Assam | |
| | The Governor of the North-West Frontier
Province | 66,000 rupees. |
| 20 | The Governor of Orissa | |
| | The Governor of Sind | |
2. There shall be paid to the Governor-General and to the
 Governors such allowances for expenses in respect of equipment
 and travelling upon appointment and such other allowances as
 may from time to time be fixed by His Majesty in Council, and
 25 such provision shall be made for enabling the Governor-General
 and the Governors to discharge conveniently and with dignity
 the duties of their offices as may be determined by His Majesty
 in Council.
3. While the Governor-General or a Governor is absent
 30 on leave he shall in lieu of his salary be entitled out of the
 revenues of the Federation or, as the case may be, the Province
 to such leave allowance as may be fixed by His Majesty in
 Council.
4. While any person appointed by His Majesty to act as
 35 Governor-General or as a Governor is so acting he shall be
 entitled to receive the same salary and, save as may be other-
 wise provided by His Majesty in Council, the same allowances
 as the Governor-General or that Governor.
5. Any sums required to give effect to the provisions of
 40 this Schedule shall, in the case of the Governor-General or a
 person acting as such, be paid out of and charged on the revenues
 of the Federation and in the case of a Governor or a person
 acting as such, be paid out of and charged on the revenues of
 the Province.

A.D. 1935.

FOURTH SCHEDULE.

Sections 24,
47, 190, 210.

FORMS OF OATHS OR AFFIRMATIONS.

1.

Form of oath or affirmation to be taken or made by a member
of a Legislature who is a British subject :—

5

“I, A.B., having been elected [*or nominated or*
appointed] a member of this Council [*or Assembly*], do
solemnly swear [*or affirm*] that I will be faithful and bear
true allegiance to His Majesty the King, Emperor of
India, His heirs and successors, and that I will faithfully
discharge the duty upon which I am about to enter.”

2.

Form of oath or affirmation to be taken or made by a
member of a Legislature who is the Ruler of an Indian State :—

“I, A.B., having been elected [*or nominated or* 15
appointed] a member of this Council [*or Assembly*], do
solemnly swear [*or affirm*] that I will be faithful and
bear true allegiance in my capacity as Member of this
Council [*or Assembly*] to His Majesty the King, Emperor
of India, His heirs and successors, and that I will faithfully 20
discharge the duty upon which I am about to enter.”

3.

Form of oath or affirmation to be taken or made by a
member of a Legislature who is a subject of the Ruler of an
Indian State :—

25

“I, A.B., having been elected [*or nominated or*
appointed] a member of this Council [*or Assembly*], do
solemnly swear [*or affirm*] that, saving the faith and
allegiance which I owe to C.D., his heirs and successors,
I will be faithful and bear true allegiance in my capacity 30
as Member of this Council [*or Assembly*] to His Majesty
the King, Emperor of India, His heirs and successors,
and that I will faithfully discharge the duty upon which
I am about to enter.”

4.

35

Form of judicial oath or affirmation to be taken or made by
a British subject :—

“I, A.B., having been appointed Chief Justice [*or*
a judge] of the Court do solemnly swear
[*or affirm*] that I will be faithful and bear true allegiance 40
to His Majesty the King, Emperor of India, his heirs and

successors and that I will faithfully perform the duties of A.D. 1935.
my office to the best of my ability, knowledge and
judgment.”

4TH SCH.
—cont.

5.

5 Form of judicial oath or affirmation to be taken or made by
a subject of the Ruler of an Indian State :—

“ I, A. B., having been appointed Chief Justice [or
a judge] of the Court do solemnly swear
[or affirm] that saving the faith and allegiance which I owe
to C.D., his heirs and successors, I will be faithful and
bear true allegiance in my judicial capacity to His Majesty
the King, Emperor of India, his heirs and successors, and
that I will faithfully perform the duties of my office to the
best of my ability, knowledge and judgment.”

15

FIFTH SCHEDULE.

Section 61.

COMPOSITION OF PROVINCIAL LEGISLATURES.

General Qualification for Membership.

1. A person shall not be qualified to be chosen to fill a seat
in a Provincial Legislature unless he—

- 20 (a) is a British subject or the Ruler or a subject of an Indian
State which has acceded to the Federation ; and
- (b) is, in the case of a seat in a Legislative Assembly, not
less than twenty-five years of age, and in the case of a
seat in a Legislative Council, not less than thirty years
25 of age ; and
- (c) possesses such, if any, of the other qualifications specified
in this Schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen
to serve as a member of a Provincial Legislature, a person, if
30 otherwise duly qualified, shall be eligible to be chosen to serve
for a further term.

Legislative Assemblies.

3. The allocation of seats in Provincial Legislative Assem-
blies shall be as shown in the relevant Table of Seats appended to
35 this Schedule.

A.D. 1935.

5TH SCH.
—cont.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

- (i) the number specified in the third column shall be general 5 seats of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas ;
- (ii) the numbers specified in the next ten columns shall 10 be the numbers of seats to be filled by persons chosen to represent respectively—(a) backward areas and backward tribes ; (b) the Sikh community ; (c) the Muhammadan community ; (d) the Anglo-Indian community ; (e) the European community ; (f) the Indian-Christian 15 community ; (g) the interests of commerce, industry, mining and planting ; (h) landholders ; (i) universities ; and (j) the interests of labour ; and
- (iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh 20 seats, Muhammadan seats, Anglo-Indian seats or Indian-Christian seats) to be filled by women.

In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandar.

5. A Province, exclusive of any portion thereof which His 25 Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the election of persons to fill the general seats ;
- (ii) for the election of persons to fill the Sikh seats, if 30 any ;
- (iii) for the election of persons to fill the Muhammadan seats ;
- (iv) for the election of persons to fill the Anglo-Indian seats, if any ; 35
- (v) for the election of persons to fill the European seats, if any ;
- (vi) for the election of persons to fill the Indian-Christian seats, if any ;
- (vii) for the election of persons to fill the landholders seats, 40 if any.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

6. The required number of general seats to be reserved for members of the scheduled castes, and in the Province of Bombay for Marathas, shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more 5 seats in each of so many of the general territorial constituencies as may be necessary, so, however, that in each such constituency there shall be at least one unreserved seat.

7. In a province in which any general seats are reserved for members of the scheduled castes, all members of those castes who 10 are qualified voters in a constituency in which any seats is so reserved shall at a primary election elect four candidates for each seat so reserved, and no person not so elected as a candidate shall be qualified to hold in that constituency a seat so reserved.

8. The persons to fill the seats specified in columns fifteen 15 to nineteen of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either—

(a) constituencies formed for other purposes ; or

(b) special constituencies formed for the purpose of electing women members.

9. At an election in a territorial constituency (whether 20 the seat to be filled is a woman's seat or not)—

(i) if the constituency is a general one, persons entitled to vote in a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European 25 constituency, or an Indian-Christian constituency shall not be entitled to vote, but save as afor said every voter on the electoral roll of the constituency shall be entitled to vote ; and

(ii) if the constituency is a Sikh constituency, a Muhammadan 30 constituency, an Anglo-Indian constituency, a European constituency or an Indian-Christian constituency, no person shall be entitled to vote who is not, as the case may be, a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian :

35 Provided that in Assam at an election in a general constituency to fill the general seat reserved for women every woman on the electoral roll of the constituency shall be entitled to vote, notwithstanding that she is also entitled to vote in a communal constituency.

40 10. In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of universities or representatives of labour, persons to fill those seats shall be chosen in such manner as may be 45 prescribed.

A.D. 1935

5TH SCH.
—cont.

11. In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

12. A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless—

- (a) in the case of a seat to be filled by a woman, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed; and
- (b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

Legislative Councils.

13. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Schedule.

14. In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

- (a) the number specified in the third column shall be general seats;
- (b) the numbers specified in the fourth and fifth and sixth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian-Christian community;
- (c) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote; and
- (d) the number specified in the eighth column shall be seats to be filled by persons (who shall not be persons holding office under the Crown) chosen by the Governor in his discretion.

15. A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the purpose of electing persons to fill the general seats

(ii) for the purpose of electing persons to fill the Muham- A.D. 1935.
madan seats ;

(iii) for the purpose of electing persons to fill the European 5TH SCH.
seats ; —cont.

5 (iv) for the purpose of electing persons to fill the Indian
Christian seats, if any.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those 10 seats to each constituency.

16. At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, a European constituency, or an Indian-Christian constituency shall not be entitled to vote.

15 In the case of a Muhammadan constituency, a European constituency, or an Indian-Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, a European, or an Indian-Christian.

17. The qualifications entitling a person to vote in territorial 20 constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed.

18. The term of office of a member of the Legislative Council of a Province other than a member chosen to fill a casual vacancy 25 shall be nine years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provision as he thinks fit by curtailing the term of office of some of the members then chosen for securing that, as nearly as may be, one third of the members holding seats of each class shall retire in 30 every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

General.

19. In the foregoing provisions of this Schedule the following 35 expressions have the meanings hereby assigned to them, that is to say,—

“a European”, “an Anglo-Indian” and “the scheduled castes” have the same meanings respectively as they have in Part I of the First Schedule to this Act ;

40 “backward areas” and “backward tribes” mean respectively such areas and tribes as His Majesty in Council may from time to time declare to be areas and tribes to which a special system of representation is more appropriate, and

A.D. 1935.

5TH SCH.

—cont.

“prescribed” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph. 5

20. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or after the constitution of the Provincial Legislature by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and securing the due constitution of the Provincial Legislature and in particular but without prejudice to the generality of the foregoing words with respect to— 10

- (i) the notification of vacancies including casual vacancies and the proceedings to be taken for filling vacancies ; 15
- (ii) the nomination of candidates ;
- (iii) the conduct of elections including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of land-holder ; 20 25
- (iv) the expenses of candidates at elections ;
- (v) corrupt practices and other offences at or in connection with offences ;
- (vi) the decision of doubts and disputes arising out of or in connection with elections ; and 30
- (vii) the manner in which the rules are to be carried into effect. 35

TABLE OF SEATS.

Provincial Legislative Assemblies.

1. Province.	2. Total Seats.	3. 4. General Seats.		5. Seats for repre- sentatives of back- ward areas and tribes.	6. Sikh Seats.	7. Mu- ham- madan Seats.	8. Anglo- Indian Seats.	9. Euro- pean Seats.	10. Indian Chris- tian Seats.	11. Seats for repre- sentatives of com- merce, indus- try, mining and plant- ing.	12. Land- holders, Seats.	13. Uni- versity Seats.	14. Seats for repre- sentatives of labour.	15. 16. 17. 18. 19. Seats for Women.				
		Total of General Seats.	General Seats re- served for Sche- duled Castes.											General.	Sikh.	Mu- ham- madan.	Ang- lo- In- dian.	Indian Chris- tian
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	81	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North-Western Fron- tier Province	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.

In Assam the seat reserved for women shall be a non-communal seat.

TABLE OF SEATS.

Provincial Legislative Councils.

1. Province.	2. Total of Seats	3. General Seats.	4. Muhammadan Seats.	5. European Seats.	6. Indian Christian Seats.	7. Seats to be filled by Legislative Assembly.	8. Seats to be filled by Governor.
Madrās . . .	Not less than 54 Not more than 56	} 35	7	1	3	—	} Not less than 8. Not more than 10.
Bombay . . .	Not less than 29 Not more than 30	} 20	5	1	—	—	} Not less than 3. Not more than 4.
Bengal . . .	Not less than 63 Not more than 65	} 10	17	3	—	27	} Not less than 6. Not more than 8.
United Provinces . .	Not less than 58 Not more than 60	} 34	17	1	—	—	} Not less than 6. Not more than 8.
Bihar . . .	Not less than 29 Not more than 30	} 9	4	1	—	12	} Not less than 3. Not more than 4.

SIXTH SCHEDULE.

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Section 91.

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS.

PART I.

Excluded Areas

- 5 The North-East Frontier (Sadiya, Balipara and Lakhimpur)
Tracts.
The Naga Hills District.
The Lushai Hills District.
The Chittagong Hill Tracts.

10 PART II.

Partially Excluded Areas.

- The North Cachar Hills (in the Cachar District).
The Garo Hills District.
The Mikir Hills (in Nowgong and Sibsagar Districts).
15 The British portion of the Khasi and Jaintia Hills District,
other than the Shillong Municipality and Cantonment.
The District of Angul.
The Chota Nagpur Division.
The District of Sambalpur.
20 The Santal Parganas District.
The Darjeeling District.
The Laccadive Islands, including Minicoy.
The Gangam, Vizagapatam and Godavari Agencies.

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Section 100.

SEVENTH SCHEDULE.

LEGISLATIVE LISTS.

LIST I.

FEDERAL LEGISLATIVE LIST.

1. His Majesty's naval, military and air forces in India 5
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, including the use
of those forces in aid of the civil power, whether Federal or Provin-
cial; central intelligence bureau; preventive detention in relation 10
to defence and external affairs.

2. Naval, military and air force works; local self-government
in cantonment areas, the regulation of house accommodation in
such areas, and, within British India, the delimitation of such 15
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. 20

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. 25

8. Federal Public Services and Federal Public Service
Commission.

9. Federal pensions, that is to say, pensions payable by the
Federation or out of Federal revenues.

10. Works, lands and buildings vested in or in the possession 30
of His Majesty for the purposes of the Federation, but as regards
property situate in a Province subject always to Provincial
legislation, save in so far as Federal law otherwise provides.

11. The Imperial Library, the Indian Museum, the Imperial
War Museum, the Victoria Memorial, and any similar institution 35
controlled or financed by the Federation.

12. Federal agencies and institutes for the following pur-
poses, 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 40
University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Federal meteorological organisations.

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7TH SCH.
—cont.

15. Ancient and historical monuments ; archæological sites and remains.

5 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 Indian subjects of His Majesty, 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. Railways, that is to say, the regulation of Federal railways ; the regulation of other railways in respect of maximum and minimum rates and fares, terminal charges, safety, routeing and interchangeability of traffic, and limitation of liability ; construction of new railways other than minor railways ; reconstruction of existing railways other than minor railways.

21. Regulation and control of vessels (other than vessels propelled by sails or oars) on navigable waterways situate in more than one unit, and the rule of the road on such waterways.

22. Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction.

23. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

24. Fishing and fisheries beyond territorial waters.

25. Aircraft and air navigation ; regulation and organisation of air traffic and of aerodromes.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Carriage of passengers and goods by sea, by navigable waterways situate in more than one unit, or by air.

28. Copyright, inventions, designs, trademarks and merchandise marks.

29. Cheques, bills of exchange, promissory notes and other like instruments.

30. Arms ; firearms ; ammunition.

31. Explosives.

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7TH SCH.
—cont.

32. Opium, so far as regards cultivation and manufacture, or sale for export.

33. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

34. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies, and of corporations with objects not confined to one unit.

35. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

36. Insurance, that is to say, the law of insurance and the conduct of insurance business, but not including Government insurance business.

37. Banking, that is to say, the conduct of banking business by corporations.

38. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to railway areas, and to any other 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.

39. Conduct of elections to the Federal Legislature, including election offences and disputed elections, but subject to the provisions of any Order in Council made by or under this Act.

40. Offences against laws with respect to any of the matters in this list.

41. Statistics for the purposes of any of the matters in this list.

42. Duties of customs, including export duties.

43. Duties of excise on tobacco and other commodities and articles 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.

44. Corporation tax.

A.D. 1935.

7TH SCH.
—cont.

45. Salt.
46. State lotteries.
47. Naturalisation.
48. Migration within India from or into a Governor's Province
5 or a Chief Commissioner's Province.
49. Establishment of standards of weight.
50. Jurisdiction and powers of all courts, except the Federal
Court, with respect to any of the matters in this list.
51. Taxes on income other than income from agricultural
10 land.
52. Taxes on the capital of individuals or of companies,
other than agricultural land.
53. Duties in respect of succession to property other than
agricultural land.
- 15 54. 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.
55. Terminal taxes on goods or passengers carried by railway,
water or air; taxes on railway fares and freights.
- 20 56. 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 and the administration of justice; constitu-
25 tion and organisation of all courts, except the Federal Court, and
fees taken therein.
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.
- 30 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; preventive detention, and persons subject to such
35 detention.

A.D. 1935.

7TH SCH.
—cont.

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 Province or out of Provincial revenues. 5
8. Works, lands and buildings vested in or in the possession 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. 10
11. Conduct of elections to the Provincial Legislature, including election offences and disputed elections subject to the provisions of any Order in Council made by or under this Act.
12. 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. 15
13. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.
14. Pilgrimages, other than pilgrimages to places beyond India. 20
15. Burials and burial grounds.
16. Education.
17. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways; inland waterways and traffic thereon subject to the provisions of List I with regard to navigable waterways situate in more than one unit; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles. 25 30
18. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.
19. 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. 35

20. 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 and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered estates; treasure trove.

A.D. 1935.
7TH SCH.
—cont.

21. Forests.

22. Mines, including the development of mineral resources of the Province.

23. Fisheries.

10 24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

27. Inns and innkeepers.

15 28. Production, supply and distribution of commodities; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

20 29. Adulteration of foodstuffs and other articles; weights and measures.

30 30. 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.

31. Relief of the poor; unemployment.

30 32. 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.

33. Charities and charitable institutions; charitable and religious endowments.

34. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

35 35. Betting and gambling.

36. Offences against laws with respect of any of the matters in this list.

37. Statistics for the purpose of any of the matters in this list.

A.D. 1935.

7TH SCH.
—cont.

38. 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.

39. Duties of excise on the following commodities and articles manufactured or produced in India— 5

- (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. 10

40. Taxes on income from agricultural land.

41. Taxes on lands and buildings, hearths and windows.

42. Duties in respect of succession to agricultural land.

43. Taxes on mineral rights. 15

44. Capitation taxes.

45. Taxes on professions, trades, callings and employments.

46. Taxes on animals and boats.

47. Taxes on the sale of commodities, on turnover and on advertisements. 20

48. Cesses on the entry of goods into a local area.

49. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

50. 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. 25

51. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST III.

CONCURRENT LEGISLATIVE LIST. 30

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. 35

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. 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.

A.D. 1935.
7TH SCH.
—cont.

4. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

5. Marriage and divorce; infants and minors; adoption.

10 6. Wills, intestacy, and succession, save as regards agricultural land.

7. Transfer of property other than agricultural land; registration of deeds and documents.

8. Trusts and Trustees.

15 9. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract.

10. Arbitration.

11. Bankruptcy and insolvency; administrators-general and official trustees.

20 12. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

13. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

25 14. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

15. Legal, medical and other professions.

16. Newspapers, books and printing presses.

17. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

30 18. Poisons and dangerous drugs.

19. Health insurance, including invalidity pensions; old age pensions.

20. Mechanically propelled vehicles.

21. Boilers.

35 22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

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7TH SCH.

—cont.

24. 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.

5

26. Factories ; regulation of the working of mines, but not including mineral development.

27. Welfare of labour ; provident funds ; employers' liability and workmen's compensation.

28. Trade unions ; industrial and labour disputes. 10

29. The prevention of the extension from one unit to another of infectious or contagious diseases or pest affecting men, animals or plants.

30. Electricity.

31. The sanctioning of cinematograph films for exhibition. 15

32. Persons subject to preventive detention under any Federal law.

33. Statistics for the purpose of any of the matters in this Part of this List.

34. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court, 20

In this Schedule "unit" means a Governor's Province, a Chief Commissioner's Province, or a Federated State ; "railway" includes "tramway" ; "minor railway" means a railway situate wholly in a unit and not in physical connection with or of the same gauge as an adjacent railway extending beyond a single unit ; "Federal railways" includes all railways not being minor railways or railways owned by a State and managed by or on behalf of the ruler of that State.

EIGHTH SCHEDULE.

A.D. 1935.

THE FEDERAL RAILWAY AUTHORITY.

1. The Federal Railway Authority, which shall be a body ^{Section 176.} corporate by, and may sue and be used in, that name, (in this 5 Schedule referred to as "the Authority") shall consist of seven persons to be appointed by the Governor-General.

2. A person shall not be qualified to be appointed or to be a member of the Authority—

10 (a) unless he has had experience in commerce, industry, agriculture, finance, or administration ; or

(b) if he is, or within the twelve months last preceding has been—

15 (i) a member of the Federal or any Provincial Legislature ; or

(ii) in the service of the Crown in India ; or

(iii) a railway official in India.

3. Of the first members of the Authority three shall be appointed for three years and any of those members shall at the expiration of his original term of office be eligible for re- 20 appointment for a further term of three years, or of five years.

Subject as aforesaid, a member of the Authority shall be appointed for five years and shall at the expiration of his original term of office be eligible for re-appointment for a further term not exceeding five years.

25 The Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member is for any reason unable or unfit to continue to perform the duties of his office.

4. A member of the Authority shall be entitled to receive 30 such salary and allowances as the Governor-General, exercising his individual judgment, may determine :

Provided that the emoluments of a member shall not be reduced during his term of office.

5. All acts of the Authority and all questions before them 35 shall be done and decided by a majority of the members present and voting at a meeting of the Authority.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

6. If a member of the Authority is or becomes the holder of 40 any contract for the supply of materials to, or the execution of works for, any railway in India, or is or becomes concerned in the management of any company holding such a contract as aforesaid he shall forthwith make full disclosure of the facts to the

A.D. 1935.

8TH SCH.

—cont.

Authority and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract.

7. At any meeting of the Authority a person or persons deputed by the Governor-General to represent him may attend and speak, but not vote. 5

8. Subject to the provisions of this Act, the Authority may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

9. The proceedings of the Authority shall not be invalidated by any vacancy among their number, or by any defect in the 10 appointment or qualification of any member.

10. At the head of the executive staff of the Authority there shall be a chief railway commissioner, being a person with experience in railway administration, who shall be appointed by the Authority, subject to confirmation by the Governor-General, 15 exercising his individual judgment.

11. The chief railway commissioner shall be assisted in the performance of his duties by a financial commissioner, who shall be appointed by the Governor-General, and by such additional 20 commissioners, being persons with experience in railway administration, as the Authority on the recommendation of the chief railway commissioner may appoint.

12. The chief railway commissioner shall not be removed from office except by the Authority and with the approval of the Governor-General, exercising his individual judgment, and 25 the financial commissioner shall not be removed from office except by the Governor-General, exercising his individual judgment.

13. The chief railway commissioner and the financial commissioner shall have the right to attend any meeting of the Authority, and the financial commissioner shall have the right 30 to require any matter which relates to, or affects, finance to be referred to the Authority.

14. The Authority shall not be liable to pay Indian income tax or supertax on any of its income, profits or gains.

15. The authority shall entrust all their money which is not 35 immediately needed to the Reserve Bank of India and employ that bank as their agents for all transactions in India relating to remittances, exchange and banking, and the bank shall undertake the custody of such moneys and such agency transactions on the same terms and conditions as those upon which they undertake 40 the custody of moneys, belonging to, or agency transactions, for the Federal Government.

NINTH SCHEDULE.

A. D. 1935.

Section 295.

PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED
IN FORCE WITH AMENDMENTS UNTIL THE ESTABLISH-
MENT OF THE FEDERATION.

5

The Governor-General's Executive Council

36.—(1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual. Members of Council.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England, or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a high court, of not less than ten years' standing.

(4) If any member of the Council (other than the Commander-in-Chief for the time being of His Majesty's forces in India) is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council, in any case where such provision is not made by the foregoing provisions of this section.

37. If the Commander-in-Chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General. Rank and precedence of Commander-in-Chief.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof. Vice-President of Council.

39.—(1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints. Meetings.

(2) At any meeting of the Council the Governor-General or other person presiding and one member of the Council (other than the Commander-in-Chief) may exercise all the functions of the Governor-General in Council.

40.—(1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Business of Governor-General in Council.

A. D. 1935. Council may direct, and, when so signed, shall not be called into
 9TH SCH. question in any legal proceeding on the ground that they were not
 —cont. duly made by the Governor-General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive 5 Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

Procedure
 in case of
 difference
 of opinion.

41.—(1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive 10 Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before 15 the Governor-General in Council, whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended 20 or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient 25 majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject. 30

(4) Nothing in this section shall empower the Governor-General to do anything which he could not lawfully have done with the concurrence of his Council.

Provisions
 for absence
 of Governor-
 General from
 meetings of
 Council.

42. If the Governor-General is obliged to absent himself from any meeting of the Council, by indisposition or any other 35 cause, the vice-president, or, if he is absent, the senior member (other than the Commander-in-Chief) present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present :

Provided that, if the Governor-General is at the time resident 40 at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the 45 majority at a meeting of the Council.

43.—(1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his Executive Council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the Council.

A.D. 1935.

9TH SCH.
—cont.Powers of
Governor-
General in
absence
from
Council.*The Indian Legislature.*

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Indian
legislature.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to be both chambers.

63A.—(1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

Council of
State.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

63B.—(1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

Legislative
Assembly.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63C.—(1) There shall be a president of the Legislative Assembly, who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

President of
Legislative
Assembly.

A.D. 1935.

9TH SCH.
—cont.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General. 5

(3) A president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General. 10

(4) A president and deputy-president shall receive such salaries as may be determined by Act of the Indian Legislature.

Duration
and sessions
of Legisla-
tive
Assembly
and Council
of State.

63D.—(1) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting : 15

Provided that—

- (a) either chamber of the legislature may be sooner dissolved by the Governor-General ; and
- (b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit ; 20 and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months, after the date of dissolution 25 for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions. 30

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote 35 in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

Membership
of both
cham bers.

63E.—(1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any 40 non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat 45 in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

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9TH SCH.
—cont.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

64.—(1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

Supple-
mentary
provisions
as to com-
position of
Legislative
Assembly
and Council
of State.

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise ; and
- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly ; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matter incidental or ancillary thereto ; and
- (d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly ; and
- (e) the final decision of doubts or disputes as to the validity of an election ; and
- (f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

67.—(1) Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president ; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

Business and
proceedings
in Indian
legislature.

(2A) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any

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9TH SCH.
—cont.

amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction. 5

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments 10 or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, 15 in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian 20 legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct 25 of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may, with the consent of the Governor-General, be altered by the chamber to 30 which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the 35 chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber. 40

Indian
Budget.

67A.—(1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both Chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or 45 moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration unless the Governor-General otherwise directs :—

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9TH SCH.
—cont.

- (i) interest and sinking fund charges on loans ; and
- (ii) expenditure of which the amount is prescribed by or under any law ; and
- 10 (iii) salaries (including in the case of the Governor-General sums payable on his account in respect of his office) and pensions payable to or to the dependants of—
 - (a) persons appointed by or with the approval of His Majesty ;
 - 15 (b) Chief Commissioners and Judicial Commissioners ; and
- (iv) any grants for purposes connected with the administration of any areas in a Province which are for the time being Excluded Areas ; and
- 20 (v) the sums payable to His Majesty under the Government of India Act, 1935, in respect of the expenses of His Majesty incurred in discharging the functions of the Crown in relation to Indian States ; and
- (vi) expenditure classified by the order of the Governor-General in Council as—
 - 25 (a) ecclesiastical ;
 - (b) external affairs ;
 - (c) defence.
- (vii) any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on the revenues of the Federation.
- 30

(4) If any question arises as to whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

35 (5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

40 (6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, 45 if he declares that he is satisfied that any demand which has been

A.D. 1935.

9TH SCH.

—cont.

refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provision
for case of
failure to
pass legisla-
tion.

67B.—(1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India, or any part thereof, and thereupon—

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General ; and

(b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat ; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to :

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68.—(1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

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9TH SCH.
—cont.
Assent of
Governor-
General to
Bills.

(2) A Bill passed by both chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

69.—(1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

Power of
Crown to
disallow
Acts.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

Power to
make ordi-
nances in
cases of
emergency.

Salaries, Leave of Absence, Vacation of Office, etc.

85.—(1) There shall be paid to the Governor-General of India, to the Commander-in-Chief of His Majesty's Forces in India and to the members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1934; but the salary of the Governor-General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in-Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

Salaries and
allowances
of Governor-
General and
certain other
officials in
India.

A.D. 1935.

9TH SCH.
—cont.

(2) Provided as follows :—

- (a) the Secretary of State shall not make any Order affecting salaries of members of the Governor-General's Executive Council except after consulting his advisers and with the concurrence of at least one-half of 5 them ;
- (b) if any person to whom this section applies holds or enjoys any pension or salary or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the 10 amount of the pension, salary or profits of office so held or enjoyed by him ;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of the Governor- 15 General in Council.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein : 20

Provided that nothing in this section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons before the commencement of Part III of the Government of India Act, 1935, by the Secretary of State in Council or may thereafter be sanctioned 25 by the Secretary of State.

Power to
grant leave
of absence
to Governor-
General, &c.

86.—(1) The Secretary of State may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private 30 affairs.

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs. 35

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office :

Provided that the Secretary of State may, if he thinks fit, extend any period of leave so granted, but in any such case the 40 reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the 45 period of leave as originally granted, or, if that period is extended

by the Secretary of State during the period as so extended, but, ^{A.D. 1935.}
 if his absence exceeds that period, his office shall be deemed to ^{9TH SCH.}
 have become vacant in the case of a person granted leave for ^{—cont.}
 urgent reasons of public interest as from the termination of
 5 that period and in any other case as from the commencement
 of his absence.

(5) Where a person obtains leave of absence in pursuance of
 this section he shall be entitled to receive during his absence
 such leave-allowances as may be prescribed by rules made by
 10 the Secretary of State, but, if he does not resume his duties upon
 the termination of the period of the leave, he shall, unless the
 Secretary of State otherwise directs, repay, in such manner as
 may be so prescribed as aforesaid, any leave-allowances received
 under this subsection.

15 (6) If the Governor-General or the Commander-in-Chief
 is granted leave for urgent reasons of public interest, the
 Secretary of State may, in addition to the leave-allowances to
 which he is entitled under this section, grant to him such
 further allowances in respect of travelling expenses as the
 20 Secretary of State may think fit.

(7) Rules made under this section shall be laid before both
 Houses of Parliament as soon as may be after they are made.

87.—(1) Where leave is granted in pursuance of the ^{Acting ap-}
 foregoing section to the Governor-General or to the Commander- ^{pointments}
 25 in-Chief, a person shall be appointed to act in his place during ^{during the}
 his absence, and the appointment shall be made by His Majesty ^{absence of}
 by warrant under the Royal Sign Manual. The person so ^{the Gover-}
 appointed during the absence of the Commander-in-Chief may, ^{nor-General,}
 if the Commander-in-Chief was a member of the Executive ^{&c., on}
 30 Council of the Governor-General, be also appointed by the ^{leave.}
 Governor-General in Council to be a temporary member of that
 Council.

(2) The person so appointed shall, until the return to duty
 of the permanent holder of the office, or, if he does not return,
 35 until a successor arrives, hold and execute the office to which
 he has been appointed and shall have and may exercise all the
 rights and powers thereof and shall be entitled to receive the
 emoluments and advantages appertaining to the office, foregoing
 the emoluments and advantages (if any) to which he was entitled
 40 at the time of his being appointed to that office.

89.—(1) If any person appointed to the office of Governor- ^{Power for}
 General is in India on or after the event on which he is to succeed, ^{Governor-}
 and thinks it necessary to exercise the powers of Governor-General ^{General to}
 before he takes his seat in Council, he may make known by ^{exercise}
 45 notification his appointment and his intention to assume the office ^{powers be-}
 of Governor-General, ^{fore taking}
^{seat.}

A.D. 1935.

9TH SCH.
—cont.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General. 5

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, 10 the senior member of the council (other than the Commander-in-Chief) then present, shall preside therein, with the same powers as the Governor-General would have had if present.

Temporary
vacancy in
office of
Governor-
General.

90.—(1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, 15 that one of the following governors, that is to say, the Governor of Madras, the Governor of Bombay, and the Governor of Bengal, who was first appointed to the office of governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India 20 is duly appointed thereto.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, 25 forgoing the salary and allowances appertaining to his office of Governor, and shall not act in his office of Governor.

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before 30 he takes his seat in Council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of section eighty-nine of this Act shall apply.

(4) Until such a governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act. 35 40

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and 45 allowances as member of Council for that period.

92.—(1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of council.

A.D. 1935.
9TH SCH.
—cont.
Temporary
vacancy in
office of
member of
the Execu-
tive Council.

(2) Until a successor arrives, the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the Executive Council of the Governor-General (other than the Commander-in-Chief) is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave or special duty, the Governor-General in Council shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4A) When a member of the Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

(5) Provided as follows :—

(a) no person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment ; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Council, no temporary appointment may be made under this section to fill the vacancy, and, if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

A.D. 1935.

9TH SCH.
—cont.Vacancies in
legislative
councils.

93.—(1) A nominated or elected member of either chamber of the Indian legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office the Governor-General may, by notification published in the government gazette, declare that the seat in council of that member has become vacant.

Supplemental.

10

Provisions
as to rules.

129A.—(1) Where any matter is required to be prescribed or regulated by rules under this Act, and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State, and shall not be subject to 15 repeal or alteration by any legislature in India.

(2) Any rules made under this Act may be so framed as to make different provision for different provinces.

(3) Any rules to which subsection (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and 25 those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not 30 be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications and additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made 35 shall be of full force and effect, and shall not require to be further laid before Parliament.

TENTH SCHEDULE.

A.D. 1935.

Section 299.

PROVISIONS AS TO GOVERNOR OF BURMA.

1. There shall be paid to the Governor such annual salary, such allowances for his expenses in respect of equipment and travelling upon appointment and such other allowances, as may from time to time be fixed by His Majesty in Council.
2. Such provision shall be made for enabling the Governor to discharge conveniently and with dignity the duties of his office as may be determined by His Majesty in Council.
- 10 3. While the Governor is absent on leave he shall, in lieu of his salary, be entitled out of the revenues of Burma to such leave allowance as may be fixed by His Majesty in Council.
- 15 4. Any person appointed by His Majesty to act as Governor during the absence of the Governor from Burma or during any period during which the Governor is for any reason unable to perform the duties of his office shall, while he is acting as Governor, have all the powers and be subject to all the duties of the Governor, and shall be entitled to receive the same salary and, save as may be otherwise provided by His Majesty in Council, the same
- 20 allowances, as the Governor, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor.
5. Any sums required to give effect to the provisions of this Schedule shall be paid out of and charged on the revenues
- 25 of Burma.

ELEVENTH SCHEDULE.

Sections 33,
304, 332,
336, 353,
446.

AREAS IN BURMA TO WHICH SPECIAL PROVISIONS APPLY.

PART I.

- 30 (1) The Federated Shan States as specified in Notification No. 31, dated 27th September, 1922, of the Political Department of the Government of Burma as amended by any subsequent notification before the passing of this Act.
- (2) The Shan States specified in Notification No. 41, dated 5th October, 1922, of the Political Department of the Government
- 35 of Burma, other than the Federated Shan States.

A.D. 1935.

11TH SCH.
—cont.

- (3) The Arakan Hill Tracts.
- (4) The Chin Hills District.
- (5) The Kachin Hill Tracts of the Myitkyina, Bhamo and Katha Districts.
- (6) The Somra Tract. 5
- (7) The area known as the Triangle.
- (8) The area known as the Hukawng Valley lying to the north of the Upper Chindwin District.
- (9) All tribal territories which at the date of coming into operation of Part XIV of this Act are unadministered. 10

PART II.

(1) Such parts of the Myitkyina and Bhamo Districts as are not included in Part I of this Schedule.

(2) Such parts of the Upper Chindwin District as constitute the Homalin sub-division together with the village tracts which 15 were included in the former Tamu township of the Mawlaik sub-division on the date preceding its abolition.

(3) The Salween District.

TWELFTH SCHEDULE.

Section 313.

COMPOSITION OF THE BURMA LEGISLATURE.

20

General qualification for Membership.

1. A person shall not be qualified to be chosen to fill a seat in the Legislature unless he—

- (a) is a British subject ; and
- (b) is, in the case of a seat in the House of Representatives, 25 not less than twenty-five years of age, and in the case of a seat in the Senate, not less than thirty-five years of age ; and
- (c) possesses such, if any, of the other qualifications specified in this Schedule as may be appropriate in his case. 30

2. Upon the expiration of the term for which he is chosen to serve as a member of the Burma Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The House of Representatives.

A.D. 1935.

12TH SCH.

—cont.

3. Of the seats in the House of Representatives—

- (a) ninety-one seats shall be general non-communal seats ;
- 5 (b) twelve seats shall be filled by representatives of Karens ;
- (c) eight seats shall be filled by representatives of Indians ;
- 10 (d) two seats shall be filled by representatives of Anglo-Indians ;
- (e) three seats shall be filled by representatives of Europeans ;
- (f) nine seats shall be filled by representatives of Commerce and Industry ;
- 15 (g) one seat shall be filled by a representative of Rangoon University ;
- (h) two seats shall be filled by representatives of Indian Labour ;
- 20 (i) two seats shall be filled by representatives of non-Indian Labour.

References in this Schedule to representatives of Indians do not include references to representatives of Indian labour.

4. So much of Burma as His Majesty may deem suitable for inclusion in any constituency, or in any constituency of a particular class, shall be divided into territorial constituencies—

- 25 (i) for the election of persons to fill general non-communal seats ;
- (ii) for the election of persons as representatives of Karens ;
- 30 (iii) for the election of persons as representatives of Indians ;
- (iv) for the election of persons as representatives of Indian Labour ;
- (v) for the election of persons as representatives of non-Indian Labour ;

and in the case of each class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

5. In the case of the seats to be filled by representatives of Anglo-Indians and the seats to be filled by representatives of Europeans the whole of Burma shall be the constituency.

6.—(1) No person who is entitled to vote in any constituency for the election of persons as representatives of Karens, representatives of Indians, representatives of Anglo-Indians or representatives of Europeans, shall be entitled to vote at any election to fill a general non-communal seat.

A.D. 1935.

12TH SCH.
—cont.

(2) No Indian shall be entitled to vote at any election of representatives of non-Indian labour.

(3) No person shall be entitled to vote at an election of representatives of Karens, representatives of Indians or of Indian labour, representatives of Anglo-Indians or representatives of Europeans, unless he is a Karen, an Indian, an Anglo-Indian or a European, as the case may be. 5

7. Persons shall be chosen in such manner as may be prescribed to hold the seats to be filled by representatives of Commerce and Industry and Rangoon University. 10

8. Of the seats to be filled by representatives of Commerce and Industry, one shall be filled by a representative of the Burmese Chamber of Commerce, two shall be filled by representatives of the Burma Indian Chamber of Commerce, four shall be filled by representatives of the Burma Chamber of Commerce, one shall be filled by a representative of the Rangoon Trades Association and one shall be filled by a representative of the Chinese Chamber of Commerce. 15

9. A person shall not be qualified to be chosen to fill a seat in the House of Representatives unless— 20

(a) in the case of a seat to be filled by representatives of Commerce and Industry, of a representative of Rangoon University or of representatives of Indian Labour or non-Indian Labour, he possesses such qualifications as may be prescribed; 25

(b) in the case of any other seat, he is entitled to vote at an election to fill some seat in the House of Representatives.

The Senate.

10. Of the thirty-six seats in the Senate, eighteen shall be filled by persons elected by the members of the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote, and eighteen shall be filled by persons (who shall not be persons holding office under the Crown) chosen by the Governor in his discretion. 30

11. In the event of a casual vacancy occurring in a seat held by an elected Senator who was a member of the Karen, Indian, Anglo-Indian or European community, no person shall be eligible to fill the vacancy who is not as the case may be a member of the Karen, Indian, Anglo-Indian or European community. 35

12.—(1) A person shall not be qualified to be chosen to hold a seat in the Senate unless he— 40

(i) was, in the financial year preceding that in which the election is held, assessed to income-tax on an income of twelve thousand rupees a year or over; or

- (ii) paid, during and in respect of the year of assessment A.D. 1935. preceding that in which the election is held, land revenue of a thousand rupees or over in Lower Burma or five hundred rupees or over in Upper Burma ; or 12TH SCH. —cont.
- 5 (iii) has previous official service as a member of the Governor's Executive Council in Burma under the Acts repealed by this Act, or as a minister, or as a judge of the High Court, or as a permanent Deputy Commissioner, or as a permanent district and sessions judge ; or
- 10 (iv) has rendered other public service recognised by the conferment of a title equal to, or higher than, the Burman title of Taing kyo Pyi kyo Saung ; or
- (v) possesses such other qualifications in respect of the rendering of distinguished public service as the Governor in his discretion may prescribe.
- 15

“(2) For the purposes of this paragraph, where water rate is levied in addition to land revenue, payment thereof shall be treated as payment of land revenue.

General.

- 20 13. In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say :—

“ a European ” means a British subject of European descent in the male line who is resident in Burma and—

- 25 (a) who was born, or has a domicile, in the United Kingdom, a British possession or an Indian State ; or
- (b) whose father was so born, or has, or had up to the date of the birth of the person in question, such a domicile ;

- 30 “ an Anglo-Indian ” does not include a European but, subject as aforesaid, means a British subject who is resident in Burma and—

- (a) who is of European descent in the male line ; or
- 35 (b) who is of mixed Asiatic and non-Asiatic descent, and whose father, grandfather or more remote ancestor in the male line was born in the continent of Europe, Canada, Newfoundland, New Zealand, Australia, the Union of South Africa or the United States of America ; and

- 40 “ A Karen ” includes a “ Taungthu ” and means a person belonging to any race which the Governor exercising his individual judgment may, by notification in the Gazette, declare to be a Karen or Taungthu race for the purpose of this Schedule.

A.D. 1935.

12TH SCH.
—cont.

“ An Indian ” means a person of Indian descent in the male line, being a British subject and resident in Burma, who either was born in or has a domicile in British India or in any State in India, or whose father or grandfather was so born, or has or had up to the birth of the person 5 in question or of the father of the person in question, as the case may be, such a domicile.

“ prescribed ” means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Legislature or the Governor of Burma are competent 10 to regulate, prescribed by an Act of the Legislature or by a rule made under the next but one succeeding paragraph.

14. In so far as provision with respect to the matters herein-after mentioned is not made by this Schedule, His Majesty in 15 Council may from time to time make provision with respect to those matters or any of them, that is to say :—

- (a) the delimitation of the territorial constituencies ;
- (b) the qualifications entitling persons to vote at the elections and the preparation of electoral rolls ; 20
- (c) the conduct of the elections and the methods of voting thereat ;
- (e) the filling of casual vacancies in the House of Representatives and the Senate ;
- (f) the expenses of candidates at the elections ; 25
- (g) corrupt practices and other offences at or in connection with the elections ;
- (h) the decision of doubts and disputes arising out of or in connection with the elections ;
- (i) matters ancillary to any such matters as aforesaid. 30

15. In so far as provision with respect to any matter is not made by this Act or by His Majesty in Council or after the constitution of the Burma Legislature by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor in his discretion may 35 make rules for carrying into effect the foregoing provisions of this Schedule and securing the due constitution of the Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies, 40 and the proceedings to be taken for filling vacancies ;
- (ii) the nomination of candidates ;

- (iii) the conduct of elections, including the application to A.D. 1935.
elections to the Senate of the principle of proportional representation by means of the single transferable vote ; —^{12TH SCH.}cont.
- (iv) the expenses of candidates at elections ;
- 5 (v) corrupt practices and other offences at or in connection
with elections ;
- (vi) the decision of doubts and disputes arising out of or
in connection with elections ; and
- 10 (vii) the manner in which the rules are to be carried into
effect.

THIRTEENTH SCHEDULE.

Sections 319,
375.

FORMS OF OATHS OR AFFIRMATIONS.

1.

15 “I, A.B., having been chosen a member of the Senate [*or*
House of Representatives] of Burma, do solemnly swear [*or affirm*]
that I will be faithful and bear true allegiance to His Majesty
the King, his Heirs and Successors, and that I will faithfully
discharge the duty upon which I am about to enter.”

2.

20 I., A.B., having been appointed Chief Justice [*or a judge*] of
the High Court at Rangoon, do solemnly swear [*or affirm*] that I
will be faithful and bear true allegiance to His Majesty the King,
his Heirs and Successors, and that I will faithfully perform the
duties of my office to the best of my ability, knowledge and
25 judgment.

A.D. 1935.

Section 364.

FOURTEENTH SCHEDULE.

THE BURMA RAILWAY BOARD.

1. The Burma Railway Board shall be a body corporate by, and may sue, and be sued in, that name.

2. The Burma Chamber of Commerce, the Burma Indian 5
Chamber of Commerce, the Burmese Chamber of Commerce,
and the Chinese Chamber of Commerce shall each nominate
one of the non-official members, and two non-official members
shall be appointed by the Governor exercising his individual
judgment. 10

The non-official members shall hold office for five years
and shall be eligible for re-appointment, but any non-official
member may at any time be removed from office by the Governor
exercising his individual judgment, if he is satisfied that the
member is for any reason unable or unfit to continue to perform 15
the duties of his office.

3. A person shall not be qualified to be appointed or to be a
non-official member of the Board—

(a) unless he has had experience in commerce, industry,
agriculture, finance, or administration ; or 20

(b) if he is, or within the twelve months last preceding has
been—

(i) a member of the Legislature ; or

(ii) in the service of the Crown in Burma ; or

(iii) a railway official in Burma. 25'

4. The President and members of the Board shall be entitled
to receive such salary and allowances as the Governor, exercising
his individual judgment, may from time to time determine :

Provided that the emoluments of a member shall not be
reduced during his term of office. 30

5. If a member of the Board is or becomes the holder of any
contract for the supply of materials to, or the execution of works
for, any railway in Burma, or is or becomes concerned in the
management of any company holding such a contract as aforesaid,
he shall forthwith make full disclosure of the facts to the Board 35
and shall not take part in the consideration or discussion of, or
vote on, any question with respect to the contract.

6. All acts of the Board and all questions before it shall be done and decided by a majority of the members present and voting at a meeting of the Board. A.D. 1935.
14TH SCH.
—cont.

In the case of an equality of votes at any meeting, the person presiding thereat shall have a second or casting vote.

7. Subject to the provisions of this Act, the Board may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such order.

8. The proceedings of the Board shall not be invalidated by any vacancy among its number, or by any defect in the appointment or qualification of any member.

9. The Board shall not be liable to pay Burma income tax or supertax on any of its income, profits or gains.

FIFTEENTH SCHEDULE.

Section 451.

15

ENACTMENTS REPEALED.

Session and Chapter of Act.	Title.	Extent of Repeal.
47 and 48 Vict. c. 56.	The Indian Marine Service Act, 1884.	The whole Act.
20 5 & 6 Geo. 5. c. 61.	The Government of India Act, 1915.	The whole Act.
6 & 7 Geo. 5. c. 37.	The Government of India (Amendment) Act, 1916.	The whole Act, except sections six and eight.
9 & 10 Geo. 5. c. 101.	The Government of India Act, 1919.	The whole Act.
25 12 & 13 Geo. 5. c. 20.	The Indian High Courts Act, 1922.	The whole Act.
14 & 15 Geo. 5. c. 28.	The Government of India (Leave of Absence) Act, 1924.	The whole Act.
30 15 & 16 Geo. 5. c. 83.	The Government of India (Civil Services) Act, 1925.	The whole Act.
17 & 18 Geo. 5. c. 8.	The Government of India (Indian Navy), Act, 1927.	The whole Act.
35 17 & 18 Geo. 5. c. 24.	The Government of India (Statutory Commission) Act, 1927.	The whole Act.
20 & 21 Geo. 5. c. 2.	The Government of India (Aden) Act, 1929.	The whole Act.
40 23 & 24 Geo. 5. c. 23.	The Government of India (Amendment) Act, 1933.	The whole Act.

Government of India.

A

B I L L

To make further provision for the
government of India.

*Presented by Secretary Sir Samuel Hoare
supported by the Prime Minister,
Mr. Baldwin, Secretary Sir John
Simon, Mr. Attorney-General and
Mr. Butler.*

ORDERED BY THE HOUSE OF COMMONS TO
BE PRINTED.



THE GOVERNMENT OF INDIA BILL

Instruments of Instructions to the Governor-General and Governors

(INDIAN REPRINT)

The Instruments of Instructions which, under the provisions of clauses 13, 53 and 305 of the Bill, are to be approved by both Houses of Parliament cannot be formally submitted to Parliament for approval until the Bill has become law. The accompanying drafts have been presented to Parliament as illustrating the content of these documents which the Government have in mind. ~~The drafts are based in the main on the recommendations of the Joint Select Committee and also contain some passages and phrases (e.g. in paragraph XXXI. of the Governor-General's Instructions) which are contained in the existing Instructions to the Governor-General and Governors. The Instructions to the Governor of Burma will be on lines similar to those of the~~ Governor-General with the necessary adaptations.

*Presented to Parliament by the Secretary of State for India
by Command of His Majesty*

~~February 1935~~

PUBLISHED BY MANAGER OF PUBLICATIONS, DELHI,
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.
1935

(One Anna.)

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 _____ 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, co-operation and goodwill 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, notwithstanding 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 responsibility 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 interests 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 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 measures 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.

*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

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 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 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 in any matter which will affect the discharge of latter's duties and shall transmit his opinion 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 unbiased 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 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 duly 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 a 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 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.

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, 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 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 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 seems to him just be guided by the proportion of seats allotted to such minority communities among 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 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.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR.

WHEREAS by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor of

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on _____ and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the government of the Province of _____ are declared to be vested in the Governor as Our Representative :

AND WHEREAS, without prejudice to the provision in the said Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the said Act and the 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 a Governor 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 of _____ 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" shall include every person for the time being administering the Office of Governor according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor 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 for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of _____, and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, 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 the office as 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 by the absence of Our Governor, 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 PROVINCE.

VII. Our Governor shall do all that in him lies to maintain standards of good administration, to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare, and tending to fit all classes of the population to take their due share in the public life and government of the Province.

VIII. In making appointments to his Council of Ministers Our Governor 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 likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable 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 Province, save in relation to functions which he is required by the said Act to exercise in his discretion, Our Governor 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 shall, notwithstanding 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.

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Debate
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1935
pp. 1335
1331

X. Our Governor 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 Legislature, and those classes of the people committed to his charge 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 upon joint political action in the 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 shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XI. 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 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.

XII. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V 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.

XIII. Our Governor 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 Provincial 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 with respect to which, in

*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

*XIV. If an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor shall interpret his special responsibility for the safeguarding of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiassed persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

XV. In the framing of rules for the regulation of the business of the Provincial Government Our Governor 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 Province: and further that no reappropriation within a Grant shall be made by any Department 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.

XVI. Having regard to the powers conferred by the said Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

†XVII. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not

*This paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only.

†This paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.

hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

C.—MATTERS AFFECTING THE LEGISLATURE.

XVIII. Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, 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 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 as to endanger the position which that Court is by the said Act designed to fill;
- (c) any Bill 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 of Part V of the said Act.

*XIX. If an Agreement is made with His Exalted Highness the Nizam of Hyderabad as aforesaid Our Governor in notifying his assent in Our name to any enactment of the Provincial Legislature shall declare that his assent has been given in virtue of the provisions of Part III of the said Act and in pursuance of the agreement between Us and His Exalted Highness the Nizam.

XX. It is Our will that the power vested by the said Act in Our Governor to stay proceedings upon a Bill in the Provincial 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 would itself endanger peace and tranquillity.

XXI. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

*This paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.